PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

MARRIAGE (SAME SEX COUPLES) BILL

Twelfth Sitting

Thursday 7 March 2013

(Afternoon)

CONTENTS

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Monday 11 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Jim Hood, † Mr Gary Streeter

† Andrew, Stuart *(Pudsey)* (Con)
Bradshaw, Mr Ben *(Exeter)* (Lab)
Bryant, Chris *(Rhondda)* (Lab)
† Burrowes, Mr David *(Enfield, Southgate)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Ellison, Jane *(Battersea)* (Con)
† Gilbert, Stephen *(St Austell and Newquay)* (LD)
† Grant, Mrs Helen *(Parliamentary Under-Secretary of State for Women and Equalities)*
† Green, Kate *(Stretford and Urmston)* (Lab)
† Kirby, Simon *(Brighton, Kemptown)* (Con)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Loughton, Tim *(East Worthing and Shoreham)* (Con)
McDonagh, Siobhain *(Mitcham and Morden)* (Lab)
† McGovern, Alison *(Wirral South)* (Lab)
Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Robertson, Hugh *(Minister of State, Department for Culture, Media and Sport)*
† Shannon, Jim *(Strangford)* (DUP)
† Swayne, Mr Desmond *(Lord Commissioner of Her Majesty's Treasury)*
† Williams, Stephen *(Bristol West)* (LD)

Kate Emms, Alison Groves, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 7 March 2013

(Afternoon)

[Mr Gary Streeter *in the Chair*]

Marriage (Same Sex Couples) Bill

2 pm

Schedule 2 agreed to.

Clause 11

Effect of extension of marriage

Mr David Burrowes (Enfield, Southgate) (Con): I beg to move amendment 39, in clause 11, page 10, line 41, leave out subsections (1) and (2).

The Chair: With this it will be convenient to discuss amendment 61, in clause 11, page 10, line 41, leave out subsection (1) and insert—

'(1) In this Act—

(a) references to "marriage" in relation to same sex couples shall be changed to "union".

(b) in the law of England and Wales, "union" has the same effect in relation to same sex couples as "marriage" has in relation to opposite sex couples.'.

Mr Burrowes: Good afternoon, Mr Streeter. I hope that you are suitably refreshed for this afternoon's proceedings. Amendment 39 would remove subsections (1) and (2) and helpfully provides the Government with the opportunity to show their openness and transparency —and indeed, I believe, their honesty—in relation to the Bill. It already contains clear differences between effective marriage in respect of same-sex and opposite-sex couples. Nevertheless, clause 11 states:

"In the law of England and Wales, marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples".

The amendment would remove that understanding from the Bill.

Later in the day, we shall have the joy of looking at the different applications of adultery and consummation. We have had the opportunity to look at the ability of same-sex couples in a civil partnership to receive their conversion to marriage, which is not available to opposite-sex couples in that particular form. The Government clearly intend—it is obvious; we have already heard it—that, through the clause, the default position will be that same-sex marriage will have the same legal effects as heterosexual marriage. The clause is extremely broad and we cannot possibly know all its implications, particularly given the level of inquiry that has been undertaken.

Amendment 39 responds directly to the lack of detailed inquiry into the implications of equalising the legal effects of same-sex and opposite-sex marriage. I understand from Church representatives that officials have not apparently had the time to assess exactly the precise effect of the clause. Indeed, they have not been aided by the fact that we have had barely months to reach the position that we are at now, and they have not had the time to go through all the existing legal provisions relating to marriage and decide which are to be changed and which are not, statute by statute.

The Government have decided to take a blanket approach under the clause. My amendment would remedy that and allow them more time for reflection. The clause will affect all legislation that refers to "marriage", "husbands" and "wives", without exception. Consequently, it is likely to lead at least to confusion, and likely to litigation, as well as—given what will flow from clause 15—numerous pieces of secondary legislation. I have not counted them all, but, in statute, there are some 4,000 references to marriage, just under 2,000 to "husband" and approximately 1,800 to "wife". Unless the Minister wishes to tell me otherwise, I doubt whether they have all been considered by the Government. We must also examine the impact of the Bill on common law.

No one seems clear about the effects of the clause on existing legislation relating to marriage, which is not a sensible basis on which Parliament should legislate. The Bill is a piece of lazy drafting and the amendment would offer some rectification. Unless the Committee accepts amendment 39 to what has been described as a "live and let live" Bill, we will be left with a "suck it and see" clause.

I do not propose to rehearse in great detail all the debates on the likely consequences for legislation that refers to "marriage", but under section 403 of the Education Act 1996, guidance issued by the Secretary of State on sex education might have to be altered. The Minister, in his only reference to schools, said:

"Nothing in the legislation affects schools' rights to teach marriage according to their character, and the additional protections are therefore unnecessary."—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 28 February 2013; c. 311.]

However, the clause, as backed up by legal advice, will affect section 403, so, unless the clause is withdrawn or amended, religious schools will be guided to teach about the importance of same-sex marriage to family life and the bringing up of children, even if such teaching were contrary to the religious character and designation of the school.

I do not propose to go through that debate again—we have been there—but it highlights one example in relation to the word "marriage" where I believe the Government need to give further thought and attention to what will happen. That one example will have significant impact on about a third of all schools, which have a religious character or designation.

There is the issue of legislation that includes the words "husband" or "wife", or both. Earlier in Committee, I referred to section 47 of the Criminal Justice Act 1925, which abolished the common-law presumption of coercion of a married woman by her husband and substituted a statutory provision, which states that

"on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband."

What will be the effect of the clause on that Act? In paragraph 5 of schedule 3 to the Bill, which applies only to new legislation and therefore, technically, does not apply here, "husband" is defined as including a man

who is married to another man, and "wife" includes a woman who is married to another woman. If that is the appropriate interpretation to apply to the 1925 Act, what is the effect? Does it mean that the defence provided in section 47 will apply to both parties of a marriage between two women, but to neither party of a marriage between two men? Or does it mean that the defence will not apply at all in a same-sex marriage?

The Minister promised to give me a response when we got to the clause, which we now have done. The Committee has no doubt been patiently looking forward to that response, which I am sure will come very soon.

I have another example. Section 2 of the Administration of Justice Act 1982 provides:

"No person shall be liable in tort under the law of England and Wales or the law of Northern Ireland—

(a) to a husband on the ground only of his having deprived him of the services or society of his wife".

I had to read that twice because I thought it could be from an Act of 1882, but it is a 1982 provision that is on the statute book and still applicable. What will be the effect of the clause on that Act? If the definition of "husband" in paragraph 5 of schedule 3 to the Bill is carried over to section 2—even that is unclear—will a person be liable to a husband on the ground of his having deprived him of the services or society of his husband? Will one husband be able to deprive all others of the services and society of his husband and be able to bring tortious claims against any person who attempts to utilise or monopolise the services or society of his husband? Or does it mean that the defence will not apply at all in a same-sex marriage?

Those are just a couple of examples. No doubt there are many others. I hope that the Government have looked in detail through all the others, as well as at the difficulties that the clause gives rise to and the uncertainties that it creates, which we will have to deal with. It is not for Team marriage—the dissenters to the Bill—to highlight every law, statute or common law that will be affected. I am sure, Mr Streeter, that you would get quite exercised if I tried to do that. It is up to the Government to go through those measures and to reassure us that they will not simply leave it to case law to sort out the problems down the track. They need to come to the table to reassure us that that they have looked at this matter.

The proposed change in the law is a matter of constitutional importance. The clause provides for potentially extensive and not fully-known consequences to the laws of the land. Amendment 39 would remove the clause, which would help the Government by allowing more detailed consideration—statute by statute, line by line—of the numerous references and by creating greater clarity, enabling the Minister to come back on Report with a more sensible way of saying where the clause applies and where there is equal legal effect, but also where there may be exceptions or where certain interpretations are needed. At the very least, we could be given book-length explanatory notes to explain the detail and the real effect of the clause.

Amendment 61 is probing. It responds to the central objection of millions of people on whose behalf the dissenters to the Bill are speaking. We and they believe that the Bill is an appropriation of the institution of marriage, and, at the very least, an appropriation of the word "marriage". The amendment proposes instead the creation of same-sex unions, by changing the word "marriage" to "union" throughout the Bill wherever it refers to same-sex couples. In every way, the amendment would concede what has come to pass in the Bill and recognise that everything granted by the Bill would mirror marriage, but the term "marriage" would be retained for opposite-sex couples, recognising the distinction made by the hon. Member for Rhondda in 2004 while still recognising equal value.

We have had the Minister's initial reaction to that position, but the question is, if the Government's definition of marriage is really that it means whatever the couple want it to mean—if we have got to that thin definition of marriage—why can they not change the name of the institution that they are creating? Indeed, have the Government considered changing the name? Doing so may well take some heat out of the divisive issue of redefining the word "marriage".

Perhaps the Minister has already considered the issue, in which case the amendment is unnecessary and he can offer me reassurance. The amendment offers what could be a more conciliatory and uniting approach to dealing with an issue that has caused consternation around the country, for religious people and others beside.

The Church of England made an important point in its submission to the Committee. Despite the suggestion that happiness pervades the Church in relation to the Bill, which is clearly not the case, I have not heard a response to the Church's point:

"The established institution of marriage, as currently defined and recognised in English law, would in effect have been abolished and replaced by a new statutory concept that many inside and outside religious organisations would struggle to recognise as amounting to marriage at all."

Amendment 61 would go some way to meeting those concerns by recognising marriage—the word and its meaning—as something different from same-sex unions.

Others draw the conclusion that, if the Government are effectively to abolish marriage as we know it, we should consider another path altogether. There are those in the House—we may come back to the issue when the Bill is considered by a Committee of the whole House—who want to pursue further the question whether the state should get out of marriage and get out of the word "marriage" by creating a state-recognised system of unions that both same-sex and opposite-sex couples could take advantage of, leaving the word "marriage" to other institutions that are not part of the state.

We received a submission from Professor Julian Rivers, as well as hearing from him in our oral evidence sessions. I found his contributions helpful and thought it was helpful for the Committee to hear his views, although I am not sure that everyone truly respected what he had to say and the way that he said it. In his submission, he put forward a view that he called "A more radical proposal":

"The rushed nature of this Bill means that the Government has failed to consider whether the time is not right for a much more radical change to the structure of our marriage law. Many European states have uniform civil ceremonies and treat any religious ceremony as entirely extra-legal. This was the result of earlier conflicts between religious and secular views of marriage, conflicts to which the UK was largely immune, but which have now emerged with a vengeance. The logic of the underlying premises of the Bill points to a more radical reform"—

[Mr Burrowes]

amendment 61 would address that reform—

"to create a single legal framework for all couples substantially based on civil partnership, perhaps with a new name such as 'civil union'... to deem all existing marriages and civil partnerships to continue as civil unions in law... to permit individuals to celebrate their civil union in any way they see appropriate. One attractive model is to adopt a celebrant-based system as proposed in the then Government's 2002 White Paper and which has regrettably been ignored since.

"The advantages of such an approach would be to remove some of the doubts about whether religious liberty interests are adequately protected, to take the heat out of the battle over the 'marriage' label, and to avoid the inconsistencies the Government has fallen into over the relationship between same-sex marriage and civil partnership. In the current climate of debate, these would be considerable gains."

I ask the Government to respond and to allow us to understand why they have got to the point where we have a poorly drafted clause that needs at least amendment, if not withdrawal.

The Minister of State, Department for Culture, Media and Sport (Hugh Robertson): Welcome back to your place, Mr Streeter. I thank my hon. Friend for tabling the amendments. The effect of amendment 39 would be that a married couple of the same sex would not in general have the same rights, responsibilities and entitlements, as provided for in other legislation, as a married couple of opposite sexes. Both amendments would create a hierarchy of marriage, with a union between two people of the same sex being very much the poor relation. Beyond the ceremony itself, that would amount to a near complete negation of the benefits for same-sex couples in society as a whole that we seek through the Bill.

2.15 pm

As I made clear in previous sittings, same-sex marriages will be as legitimate in the eyes of the law as marriages between a man and a woman. We are not creating a separate institution of marriage or of purported marriage. Rather, this is about opening up the existing legal institution of marriage to same-sex couples so that all couples can enjoy the rights and benefits of being married. Those two words are crucial.

Subsections (1) and (2) of clause 11 ensure that the effect of being married is generally the same in law for same-sex couples as for opposite-sex couples. We recognise, however, that there will be particular cases that will require a different interpretation of the law, and the Bill already does that in respect of pension providers, adultery and non-consummation. We will turn to those exciting topics later this afternoon. There are other cases when applying the general provision in clause 11 would produce the wrong results, and schedule 4 stipulates those exceptions and how they would apply.

I was asked two questions about the defence of marital coercion. Coercion by a husband is a criminal-law defence. For historical policy reasons, the defence applies only for the benefit of a woman married to a man, but we are working closely across Government to explore options in light of the Bill. If we made no further provision, the defence would apply to both members of a same-sex married couple, as well as a woman married to a man, but not to a man married to a woman or civil partners, which is why work is ongoing.

My hon. Friend the Member for Enfield, Southgate also asked how we would deal with the implications of clause 11 across statute and common law. The Bill sets out the general proposition that references to marriage will include same-sex marriage and how marriage-related terms will be interpreted. As he is aware, it contains powers to enable the Government to specify when a different result is needed. We will bring forward the necessary secondary legislation before the Bill is brought into force to enable that to take place.

Mr Burrowes: The other example that was raised was section 2 of the 1982 Act. Has any consideration been given to the work that needs to be done on that?

Hugh Robertson: My hon. Friend asked about the number of references to marriage across English law—I think he mentioned 4,000. We think that the number we have positively identified is closer to 8,000. In an overwhelming majority of those cases, the interpretation provided for in the Bill works perfectly well. For those that have been identified where it does not work well, provision has been made in the Bill. The clause covers any outstanding provisions, which is, in essence, the point of having it.

The clause is key to the workability of the Bill. It provides that marriage for same-sex couples is recognised in law as the same as marriage for opposite-sex couples. It also provides protection to ensure that the equivalence provisions in the clause have no effect—this is important—on the Measures and canons of the Church of England.

Amendment 61 allows us once again to explore the meaning of marriage. The amendment would introduce a new term—"union"—to apply to the marriage of same-sex couples, while reserving the term "marriage" for opposite-sex couples. In essence, the amendment would create a division between marriage for opposite and same-sex couples, which is wholly inconsistent with the aim of the Bill. The Government do not believe that a new status is necessary, and that would damage what the Bill is trying to achieve to strengthen the institution of marriage. For that simple reason, I invite my hon. Friend the Member for Enfield, Southgate to withdraw the amendment.

Mr Burrowes: I do not wish to detain the Committee for long. I highlighted just two examples, but there are many more. The Minister referred to some 8,000 references, and the Government have a duty to provide information on all the different references so that we can properly deal with the interpretation and determine whether there are any lacunas in statute. I invite the Government to be transparent about that so that we can all have proper assurances about the true effect of clause 11.

Hugh Robertson: Let me assure my hon. Friend that that is absolutely the case. We are as confident as we can reasonably be that we have caught all the references, given that there are more than 8,000 of them in Acts going back over a long period. The provision is a sensible means of mopping up the others, and it is the Government's intention to do what he has asked us to do.

Mr Burrowes: I am grateful for that reassurance, but I am still sceptical, given the time in which the Bill is being pushed through Parliament and the extent of its huge ramifications on statute. However, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 11 ordered to stand part of the Bill.

Schedule 3

Interpretation of legislation

Question proposed, That the schedule be the Third schedule to the Bill.

Mr Burrowes: We are in areas where the pitch is worn, and I know that the Minister might not even wish to be batting on this worn wicket, because he might not have the firm stroke that he usually likes to show the Committee. Nevertheless, schedule 3 is important, because it demonstrates how trying to redefine marriage stretches language and reality to breaking point.

Paragraph 1 of schedule 3 states that, in all existing England and Wales legislation,

"a reference to marriage is to be read as including a reference to marriage of a same sex couple".

Paragraph 5(2) states that two men would call each other "husband" and two women would call each other "wife". That would include situations in which one of the women—a wife—gave birth to a child, as the non-birth partner would also be called "wife".

I had the pleasure of taking an active part in the consideration of the Bill that became the Human Fertilisation and Embryology Act 2008. Section 53(2) of that Act states:

"Any reference (however expressed) to the father of a child who has a parent by virtue of section 42 or 43 is to be read as a reference to the woman who is a parent of the child by virtue of that section."

Section 53(3) is similar, dealing with evidence of paternity when a second woman is a parent by virtue of section 42 or 43 of the Act. You may remember, Mr Streeter, the debates about references to "father". Interestingly, the Committee of the whole House that considered the Bill had the opportunity at an early stage to debate such issues, which exercised Parliament for some time.

It seems that a child's second female parent could be referred to as "father" in legal and other documents under the 2008 Act—that seems clear—with the understanding that it refers to the second woman, but they could also be referred to as the "wife" of the birth mother under schedule 3 of the Bill. This is a complicated point, so it needs careful attention and perhaps a hot towel to one's forehead. Nevertheless, it is the case that if a child had two female parents, under sections 42 or 43 of the 2008 Act—with section 42 amended by the Bill to cover same-sex marriage—the child would be in the potentially confusing situation of their birth mother calling the second parent "wife", when they were also in some cases referred to as "father" in legal documents, under the 2008 Act, but with "father" to be read as a reference to a woman.

I ask the Minister to help us by explaining the situation. I appreciate that it will be difficult for him to bat on this sticky wicket, but it is his Bill, not mine, and he needs to respond. There is confusion. There are references to "father" in legal documentation under the 2008 Act, but under the Bill, there is the seemingly different reference of "wife".

Perhaps the Minister can also explain the provisions that redefine "wife", "husband", "widow" and "widower", but maybe we have an answer, because paragraph 101 of the explanatory notes is an attempt to provide some assistance:

"This Part sets out the meanings of specific words which relate to marriage (such as 'husband' and 'wife'). It reflects the principles in the Bill, which are to put same sex marriage on an equal footing with opposite sex marriage. This will ensure that gender-specific terms such as 'husband' keep their gender-specific effect. For example, 'husband' will in future legislation include a man who is married to another man (but not a woman in a marriage with another woman); and 'wife' will include a woman who is married to another woman (but not a man married to another man) unless specific alternative provision is made."

I emphasise the phrase:

"unless specific alternative provision is made".

Does that mean that specific alternative provision can be made to allow a man to be called a wife or a mother, and a woman to be called a husband or a father? Has alternative provision been considered? Will it be made to deal with the application of the 2008 Act? I hope that the explanatory notes will be truly explanatory and we will be helped with regard to that alternative provision.

In the Bill and explanatory notes, the Government say that they are sensitive to accusations that the redefinition of marriage will result in the loss of familiar, homely words such as "father" and "mother" and their replacement with the bureaucratic phrases such as "progenitor A" that are used in places such as Spain. They say that they want to keep the words as they are, but the redefinition of terms can lead people to criticise the Government and reinforce concerns that the Bill initiates a social deconstruction that is leading to a deconstruction of words that do not belong to Government. The Government may have a view about what they would like to describe with these words, but they do not belong to Government, so they cannot do as they please with them. The words have real meaning and value, and the Government are riding somewhat roughshod through delicate areas.

I remember that the 2008 Act went through pre-legislative scrutiny. A Joint Committee worked carefully on all the issues involved, and learned Members of all parties tried to deal with some of the complex issues. A draft Bill was published and subsequently amended, and then the Bill was considered on the Floor of the House in great detail and at great length. For good measure, the process started in a Select Committee. Complex and sensitive issues were therefore dealt with carefully, but there is concern that we are now rushing full steam ahead with this Bill and leaving ourselves with some rather tortured provisions that do not give proper explanation, clarity, openness and transparency. I look forward to the Minister's full response to those points.

Hugh Robertson: I thank my hon. Friend for his questions. The simple answer is that the Government's approach is entirely consistent with the Civil Partnership Act 2004, in which many of these issues are addressed in precisely the same way. The approach under the 2004 Act was that couples should decide what they call themselves, whether that is a husband, wife, missus, the

[Hugh Robertson]

other half or whatever. It is not for the Government to determine that, and these proposals does not change that position.

The terms set out in the Bill are reasonably specific. My hon. Friend referred to part 2 of schedule 3, which deals with the interpretation of future England and Wales legislation following the Bill's enactment. It provides very specifically for gender-specific terms to have a gender-specific effect in the precisely the same way as now.

My hon. Friend asked how the provision affects parenthood. I have just received a helpful reminder that the Bill makes specific textual amendments to the 2008 Act. However, a person who is not a child's biological parent is treated in law as the child's parent only in certain circumstances: if a woman is in a civil partnership at the time of IVF in a clinic. Indeed, her civil partner can be treated as the child's parent unless she did not consent to the treatment. That will also apply under the Bill to same-sex married couples.

The key point is that the Bill is entirely consistent with that taken in the Civil Partnerships Act, and that is the approach that the Government have taken.

2.30 pm

Mr Burrowes: These are complex issues, but I am not sure that there is total clarity about the application of sections 42 and 43 of the 2008 Act, for example in relation to the term "father." I invite the Minister to write to me to ensure that we are on the same page on this, because that may be helpful as we proceed with the Bill's passage.

Hugh Robertson: I am happy to do that. I absolutely understand my hon. Friend's point. In theory, at least, we could have a rather absurd situation in which a provision specifically about husbands and wives could technically provide without husbands and wives. In theory, that possibility is there, but in our trawl of the legislation thus far, we have not identified particular circumstances where this is going to be either necessary or appropriate. However, I absolutely take the point and will write to my hon. Friend.

Question put and agreed to.

Schedule 3 accordingly agreed to.

Schedule 4

Effect of extension of marriage: further provision

Mr Burrowes: I beg to move amendment 42, in schedule 4, page 26, line 9, leave out paragraphs 3 and 4.

I am going to try to be helpful. I do not want to bowl any googlies or chinamen to the Minister, particularly as we are long into day four when, as he will know, the pitch becomes very difficult—he would not like to be out there for too long.

"The Bill proceeds on the basis that marriage should be 'equal' and that gender is irrelevant, yet inevitably has to recognise that this logic breaks down e.g. in relation to non-consummation and adultery, both of which are to remain grounds for the ending of marriages between opposite sex couples. This illustrates the fallacy of seeking to equate equality with uniformity and to redefine as identical those things that are intrinsically and objectively distinctive."

Those are not my words. They could have been, but they were taken directly from the Church of England's briefing for the Committee. The Church of England is not happy with schedule 4 and neither am I nor many millions out there.

The Secretary of State responded to a question from the right hon. Member for Exeter about whether she wanted to pursue reform of the whole issue of adultery and consummation. She replied:

"We looked very closely at the relevance of those two concepts to extending marriage, but I did not really feel that it was appropriate to get into reforming those particular concepts as part of the scope of the Bill."—[*Official Report, Marriage (Same Sex Couples) Public Bill Committee,* 12 February 2013; c. 6, Q12.]

I have tabled amendment 42 because I just do not think that that answer is good enough.

I appreciate that the Minister has distinguished his own view from the Secretary of State's reference to marriage as a "gold standard," and now the amendment gives him the opportunity to distinguish himself by defending the relevant purpose and concept of adultery and consummation in 2013. I look forward to his robust defence—I know that he has it, and that he will put his foot forward solidly without any gaps to be shown. In his defence of adultery and consummation as a relevant concept, I look forward to him referring to the correspondence with the hon. Member for Rhondda, who was able to confirm that 15% of divorces cite the importantly objective ground of adultery. That is not an insignificant red herring, as some would like to tell us—indeed, some who gave evidence sought to suggest that.

Without amendment 42, the Government are actually taking their defence away. They are lifting their bat to the balls bowled perhaps by the right hon. Member for Exeter or others, or campaign groups. They question the modern relevance of adultery and consummation. Is this all, as Stonewall told us, simply a heterosexual sex obsession? Well, if the Government reject amendment 42, maybe they agree with Stonewall; maybe they are putting up the white flag and saying that as far as marriage is concerned, the sexual fidelity and union aspect is now not quite so relevant. Amendment 42 would allow the Government to extend the notion of equality—this is where the Minister may think I am being helpful—by saying that the provisions are universally applicable to all married couples, whatever their sexuality, in common law. The amendment would do what I understand the Government intend the Bill to do and what they intended to happen after their first stab at redefining marriage, when the Bill was in consultation. In that first attempt, they wanted to leave the whole issue. They did not want to deal with it, discuss it or have a Bill Committee go through it. They wanted to leave it to the courts to decide, and for Parliament to not have anything to do with this tricky subject. They wanted to deal with the problems further down the track, and let the judges decide. I understand that there was a bit of reaction from the judges, the Law Officers and others about that proposal. Nevertheless, that was the situation.

I am trying to help the Minister, but there is only so much I can do to help the Government out of this particularly sticky wicket. The Government have opened

up the box of marriage. They are trying to fit same-sex marriage into the frame of heterosexual marriage, but they have to admit that the schedule fails to do that. If marriage is to mean anything to anyone—or, to put it another way, if its meaning is to be reduced to its lowest common denominator, to an emotion, rather than a conjugal lifelong bond—how can the Government justify the inequality that adultery and consummation will apply to opposite-sex couples and not to same-sex couples? Somewhere down the track, we might come to the conclusion that adultery and consummation are outdated concepts that should be abolished, that they should not be recognised by the state, but just be left to the Church and other religions to get obsessed over. Maybe that is where we are heading, but is that what the Government want? Unless they properly apply themselves to it, that might well be the end result.

In my generous spirit, the amendment could be supported by the majority of Committee members opposed to my view, who can look to the courts and say that we should leave it to case law. The courts will whittle away the concepts of adultery and consummation. It allows notionally for the Government to say that the Bill is about equality, and allows the courts to decide. I do not think that is a good position to be in. However, I am left in that position with the amendment, because the Government's position is to redefine marriage. If the Committee wants to recognise and support equality and the equal applicability of issues that affect all those who are married, I look forward to it supporting the amendment, which not only supports equality, but also retains the relevance of sexual union and fidelity in marriage.

Tim Loughton (East Worthing and Shoreham) (Con): I rise to support the amendment, which is in my name and those of my hon. Friends. The opposition of those of us who take the view that marriage should remain a distinctive category for different-sex relationships has been significantly compounded by the presence of some double standards at the heart of the Bill. Those double standards, which have a number of unfortunate implications, as my hon. Friend the Member for Enfield, Southgate said, are expressed nowhere more clearly than in schedule 4. The amendment would go a good way to addressing and correcting that. The Government have understandably made much about how they are creating equal marriage, as they term it. The schedule shows even more clearly than clause 9 that the Bill is failing in that task.

Jane Ellison (Battersea) (Con): Before the hon. Gentleman develops his point, has he ever put it to the Church of England that there is an existing double standard? As we established during evidence, somebody in a heterosexual marriage who has sex with somebody of the same sex does not currently commit adultery.

Tim Loughton: I am aware of countless contradictions in the Church of England and various other Churches as well. Just about any aspect of the Bill that we have discussed could probably be held up to the same charge. Let me develop my argument in support of the amendment, and my hon. Friend can come back to me. If the Government want to bring same-sex relationships within the same substantive framework as different-sex relationships so that the category of marriage encompasses both, their project would have a certain logic and would meet their given equal marriage objectives. However, schedule 4 suggests that a same-sex couple relationship should be described as married even while not submitting to the substantive definition of marriage in relation to consummation and adultery.

For centuries, adultery has been recognised as a ground for divorce. It was given recognition in statute under section 1 of the Matrimonial Causes Act 1973, and it is cited as a ground for divorce in around 15% of cases. Such recognition of adultery reflects the importance of the values of faithfulness and exclusivity that have been, and I hope will continue to be, so central to the understanding of marriage. I am sure that Ministers want them to be so as well. Paragraph 3 of schedule 4 provides that only adultery committed in a heterosexual marriage counts as grounds for divorce. According to the Bill, someone who is sexually unfaithful to their same-sex spouse with another person of the same sex has not committed adultery, and that is what the amendment would reverse.

Another fundamental feature of the understanding of marriage for hundreds of years has been the necessity of sexual union for the validity of a marriage, and that is also expressed under statute in section 12 of the 1973 Act. In schedule 4 to the Bill, however, the Government seem to be saying that sexual union is necessary only for opposite-sex married couples, and amendment 42 would reverse that. If the necessity of sexual union is no longer perceived as central to the understanding of marriage, surely marriage is severely reduced to simply a bond of companionship and attachment. Where is the romantic aspect of the marriage bond, with or without the ceremony, "Brigadoon" and all that we discussed this morning? Paragraphs 3 and 4 of schedule 4 plainly fail to bring about equality between opposite-sex marriage and same-sex marriage couples. That is a major problem, especially considering the fact that equality was such a driving motive behind the Government's plans to redefine marriage. Why should a same-sex couple who want to get married not be subject to the same obligations and rules as an opposite-sex couple who want to get married? One could logically make the case for legal recognition of same-sex relationships, but if the standards of commitment required are different from those required in a marriage, it would be completely wrong to categorise such relationships as marriage.

As someone who voted for civil partnerships, I find it interesting that just as clause 9 paves the way for vow-less marriages for same-sex couples, as is the case with civil partnerships, schedule 4 paves the way for marriages that cannot be annulled on the grounds of non-consummation and that cannot be dissolved on the grounds of adultery. Again, that is the case with civil partnerships. If the Government are serious about equal marriage, they cannot simply take civil partnerships and drop them into marriage. That does not amount to drawing same-sex relationships into the same framework as marriage; it simply makes the case for civil partnerships.

The Government have got themselves into a bit of a pickle because they have not observed simple category logic, which must observe the following principles. First, if two arrangements that are substantially the same are subjected to a difference of treatment, that amounts to discrimination. Secondly, if two arrangements that are different are treated differently, that does not amount to

[Tim Loughton]

discrimination. Thirdly, if two arrangements that are different are treated as the same, the effect is to be discriminatory by giving one arrangement the same identity as the other and suggesting that it is the same when it is not. Simples, Mr Streeter; I am sure you agree.

Amendment 42 makes the point that the Government need to make their mind up. They have to come down on one side of the fence or the other. Do they want to provide a legal framework for recognising same-sex partnerships that does not draw such partnerships into the same substantive framework as marriage, that makes no requirements in relation to adultery or consummation and that does not insist on vows? Or do the Government want to draw same-sex relationships into the same substantive framework as marriage, with all that that means in terms of adultery, consummation and vows? They have to choose.

If the Government want to create a legal framework for recognising same-sex partnerships that does not draw them into the same substantive framework as marriage but makes no requirements in relation to adultery and consummation and does not insist on vows, the Bill is not necessary because we already have such provision in the form of civil partnerships. If, however, the Government want to draw same-sex relationships into the same substantive framework as marriage so that they can be classed as marriage, the Bill does not rise to that challenge. It could, however, if we passed amendment 42.

2.45 pm

The Government's position is rather confused because they have implied that they want to draw same-sex relationships within the same framework as marriage, but the Bill does no such thing. On that basis, the result is a framework that inevitably invites a distinction between real marriage and pseudo marriage, not because of the sexes of the two people concerned but because of a failure to fulfil the same definition of commitment as that which exists for marriage now—*[Interruption.]* The Whip is getting rather exercised by consummation, I hear. Rather than creating a framework that invites this distinction, how much better it would be simply to accept that the mode of commitment between the two forms of relationship is different and, rather than falsely categorising them as one, which would inevitably result in the observation that one of them does not fulfil that definition, we should simply affirm both sets of relationships in their own terms as a real marriage and a real civil partnership.

Of particular importance, by removing the consummation and adultery provisions—amendment 42 would reverse that—the Bill not only initiates discriminatory, unequal marriage practice, demanding less of one category of relationship yet placing it with a category that requires more, but it also unquestionably undermines marriage. Just as in stating that vows are not necessary for marriage, clause 9 makes it plain that vows, one of the ultimate expressions of commitment, are not central to the identity of marriage. Schedule 4 makes it plain that neither adultery nor consummation need play a role in redefining marriage and it is quite extraordinary that the Government, who have talked so much about the importance of commitment and about supporting marriage—the Prime Minister, quite rightly, has said that he is a huge fan of marriage—should have introduced legislation that suggests that vows, consummation and adultery as grounds for divorce are not necessary to the definition of marriage, since that cannot but have the effect of undermining the current definition of commitment, which is at the heart of marriage as we know it.

The place of adultery in the principles governing marriage is particularly important: it is a ground for divorce because adultery—the breaking of faithfulness—is incompatible with the definition of marriage, which has faithfulness at its heart. The place of adultery as a ground for divorce, therefore, is as a guarantor of faithfulness and commitment in the definition of marriage in the sense that its absence is recognised as a negation of marriage. One cannot end the practice of stating that adultery is a ground for divorce in marriage per se without implying that faithfulness and commitment are less important to marriage; by taking that ground for divorce away, one has to imply that.

In seeking fully to understand the implications of removing adultery as a ground for divorce in some marriages, it is interesting to note that some lawyers have suggested that if marriage is redefined in this way, replete with schedule 4 unamended by amendment 42, in time adultery would, in practice, cease to be used as a ground for divorce for different-sex as well as same-sex marriages. The implications of that are profound and deeply ironic.

When my right hon. Friend the Member for Chingford and Woodford Green (Mr Duncan Smith) was Leader of the Opposition, he set up the Social Justice Policy Group, which produced two important reports: "Breakdown Britain" and "Breakthrough Britain". Those reports, which defined the broken Britain phenomenon, were distinctive for giving rise to a series of policy proposals that sought to renew the family through supporting commitment and through supporting marriage. Three years into this Government, however, rather than introduce robust pro-marriage policies such as transferable allowances for married couples, which we alluded to this morning, the only thing the Government have done is to introduce a deeply muddled Bill that cannot but undermine marriage, not just as it is manifest for same-sex couples, but for everyone.

I am not at all sure how we have managed to lose the plot so badly. My amendment 42, importantly, provides a means for ending the category muddle in the Bill.

Stephen Gilbert (St Austell and Newquay) (LD): I am trying to follow my hon. Friend's logic. Is he honestly suggesting, with a straight face, that opposite-sex couples may not be able to end their marriage because of one partner being unfaithful unless the Bill is amended? Surely, if he hears that in those terms, he will recognise that that is ridiculous.

Tim Loughton: I am grateful that my hon. Friend has been following my logic; I am not entirely sure that I was able to follow his. I was trying to say, if the grounds for the ending of one type of marriage are different from the grounds for the ending of another type of marriage—that type of marriage which we are now trying to legitimise in this Bill—where is the equality in that?

We have had previous debates about the basis of the rules by which one enters into a relationship, a same-sex marriage or an opposite-sex marriage. We need to get this absolutely clear. Whether we agree or disagree with it in principle, certainly we must make sure that the legislation is robust enough not to be subject to all sorts of challenges and interpretation in the courts. Just as this is important regarding the rules for entering into a marriage, so surely it must be as important to ensure that we have differentiated and distinctly identified what constitutes the ending of that marriage as well, and the grounds for going to court to get that marriage ended. In just the same way, this morning we tried to identify the procedure for converting a civil partnership into a new same-sex marriage.

In conclusion, the amendment helpfully provides a means of ending the category muddle in this Bill, and of bringing same-sex relationships into the same frame of reference as different-sex relationships. In that respect I think it is helpful for the Bill; it also promotes equality, which is at the heart of the Government's case for the Bill. I hope to have a favourable response to it from the Minister.

Hugh Robertson: As hon. Members have said, the amendment would remove paragraph 3 of schedule 4 to the Bill, which maintains the current definition of adultery for both opposite-sex and same-sex married couples, and paragraph 4 of schedule 4, which provides that non-consummation will not be a reason for the marriage of a same-sex couple to be void. The effect of these amendments would of course be that issues about adultery and non-consummation in respect of divorce and annulment of the marriages of same-sex couples would have to be determined over time by case law. As part of the consultation process the Government carefully considered whether allowing case law to develop these concepts as they relate to sexual activity between people of the same sex might be a potential means of applying them to same-sex marriage. However, we concluded, and I think the reasons for that are obvious, that this would not give couples adequate clarity and could lead to difficulties for people seeking to apply for divorce or annulment.

Let me deal first with the issue of adultery, which is of course a factor in divorce. The current definition of adultery has been developed in case law, and is detailed and explicit about the nature of sexual relations between members of the opposite sex that constitute adultery. The definition of adultery does not cover sexual relations between members of the same sex, or the precise acts which would constitute adultery between a man and another man, or a woman and another woman. That would of course need to be determined over time by the courts.

That would mean significant uncertainty for couples. It could lead to divorce applications failing, and adultery would be difficult to prove. It would also open up uncertainty for opposite-sex married couples, for whom sexual activity with a person of the same sex is not currently adultery. To make that absolutely clear, currently if one party in a heterosexual marriage has sexual relations with somebody of the same sex, that is of course not adultery. So this is not a new absurdity, if indeed my hon. Friend the Member for East Worthing and Shoreham thinks it is. Of course, it was specifically not addressed at the time of the Civil Partnership Bill, which my hon. Friend has told us with much pride that he voted for. *[Interruption.]* Paragraph 3 of schedule 4 makes it clear that sexual activity with a member of the opposite sex will constitute adultery for all married couples. Adultery will therefore continue to mean the same for both same-sex and opposite-sex married couples, as well as sexual relations with a person of the same sex.

Turning now to consummation, non-consummation makes the marriage of an opposite-sex couple voidable. Consummation is a concept that historically concerns the possibility of procreation, and therefore it would not make a great deal of sense to extend it to same-sex couples. In addition, the same sort of difficulties would apply to proving non-consummation of a same-sex marriage, whether by wilful refusal to consummate the marriage or because of incapacity, as apply to defining adultery between people of the same sex. Ensuring that couples understand their legal position is important, and it would be difficult to define the acts that constitute consummation of the marriage of a same-sex couple with the certainty needed for legal proceedings.

My hon. Friend the Member for East Worthing and Shoreham asked why sexual union is not necessary for same-sex marriage but is necessary for opposite-sex marriage. Consummation is not in fact necessary for any marriage; it is simply that non-consummation makes a marriage voidable on application by one of the parties. Adultery is a central ground for divorce. He is absolutely right about the figures, which are in the ballpark area, but there is an opportunity to cite unreasonable behaviour as grounds for divorce. The different treatment of those things does not mean that, as my hon. Friend the Member for Enfield, Southgate suggests, it is not marriage. There are certain circumstances in which, necessarily, same-sex and opposite-sex marriages are subject to different treatment. That is the nature of the beast, but it does not mean, in my view, that same-sex couples should not be married.

Taken together, paragraphs 3 and 4 of schedule 4 provide clarity on the facts of divorce if a person's spouse is unfaithful and the marriage has broken down, and on when a marriage may be annulled. I therefore ask my hon. Friend to withdraw his amendment.

Mr Burrowes: I am pleased that we have had this debate, which not everyone necessarily wanted. Schedules often reveal the most controversial aspects of a Bill, which is the case here.

What we have heard from the Minister is helpful. We have heard his thesis on the laws and concepts relating to adultery and consummation, both of which are linked to the framework and historical understanding of procreation. That explanation might not convince my hon. Friend the Member for Battersea, but the difference comes from the structural framework of procreation.

The Minister's thesis did not provide as positive a defence as I was looking forward to in relation to adultery and consummation, but at least the debate has addressed what the schedule has exposed, which is the flawed notion of equal marriage as a concept—the amendment inadequately sought to deal with that. The schedule plainly shows that same-sex marriage is not equal. The amendment exposes what happens when marriage is redefined. Yes, the Minister can seek to

[Mr Burrowes]

change how people access marriage, but he must also change how people exit marriage and, in doing so, change and redefine the nature and purpose of marriage.

The position we are in now is where the Government want us to be, which is basically to say to same-sex couples, "Adultery is not relevant to you. It does not matter." I do not believe the Government or the Minister would dream of saying that to heterosexual couples. They would not say that adultery is no longer specifically recognised in law. They would not say that time has moved on. They would not suggest that a husband or wife having an affair with someone else does not, in and of itself, violate the ties of marriage by saying, "Well, if you can prove that adultery constitutes unreasonable behaviour, you can get a divorce; if the judge disagrees with your assessment, you cannot." I believe we are heading down that track, and I am concerned, but I do not believe that even the amendment would compensate for the Bill's flaws. Nevertheless, this debate has been useful of sorts, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3 pm

Kate Green (Stretford and Urmston) (Lab): I beg to move amendment 56, page 33, line 40, in schedule 4, leave out paragraph 15 and insert—

'15 (1) Schedule 9 of the Equality Act 2010 (work: exceptions) is amended as follows.

(2) Omit sub-paragraph 18(1).'

I am grateful for the opportunity to move this amendment, and I am also grateful to Liberty for its drafting advice and for the briefing it provided to all members of the Committee.

The amendment would remove the exemption from the Equality Act 2010 which allows employers to treat married couples differently from civil partners as regards pension rights attributable to employment service prior to December 2005. In this legislation, not only is that current discrimination in relation to civil partners continued, but it also takes forward the same distinction to same-sex married couples so that, in terms of these pension rights, they would be treated differently from opposite-sex married couples. That uneven treatment would, therefore, be continued.

Paragraph 18 of schedule 9 to the Equality Act provides that withholding a benefit, facility or service that would be available to a married person from somebody in a civil partnership in relation to rights accrued before civil partnerships were introduced in this country does not constitute discrimination. There was a debate about this issue when the Civil Partnerships Act 2004 was introduced. Clearly, at a time when the concept of civil partnerships were controversial and new, it felt difficult to extend pension rights to civil partners prior to the possibility of civil partnership. However, over the nearly 10 years since, we have seen a number of developments in the way that civil partnerships have been accepted and, as an effect, correcting a wrong that existed in not legitimising same-sex relationships at all. It is important to note that the pensions industry has, in many cases, responded to the uneven treatment of civil partners by affording same-sex civil partner survivors the same pension rights that opposite-sex spouses enjoy.

In January of this year, Liberty acted on behalf of a client, John Walker, who won a legal battle to secure equal pension benefits for his civil partner. In that case, the employment tribunal found that an occupational pension scheme that provided that John's civil partner could only benefit from pension rights accrued since 2005 when civil partnerships became available in the UK was directly discriminatory. In reaching that decision, the tribunal was reliant on a European Court judgment—Maruko, of 1 April 2008—which concerned the right of a same-sex partner to receive a widow's pension when the partner dies. The Court concluded that treating married and same-sex couples differently in this respect, where national law recognised the relationships as equivalent in other respects, breached the framework directive on equal treatment in employment 2000/78/EC.

It is clear that the decision has been taken at a low level in the domestic courts, and it has been taken by an employment tribunal. It is fairly clear that the decision to follow a European framework directive is placed in the context of the legal circumstances that govern pensions law. It feels unwise, therefore, for the Bill before us to seek not only to perpetuate but to extend that discrimination in relation to same-sex married survivors. If the legislation is not amended to take account of the Walker judgment and the reliance on the European Court findings, it is likely that further legal action will be taken by same-sex married partners. They will seek to have similar redress in the courts to ensure that they too can access pension rights in an equal way. That would be regrettable, given that the overall context of the Bill is, undoubtedly, to offer greater recognition of the equal status of the partnerships and marriages of same-sex couples. Given the points raised by hon. Members in earlier debates, it is important to acknowledge that it is difficult to argue that the Bill does or can achieve perfect equality. It recognises the different circumstances of same-sex and opposite-sex couples to the extent that it does not say that equal means identical. It would be unnecessary to create differences where there is no intrinsic need for a difference of treatment within the context of the Bill, which the current wish to extend the exemption in the Equality Act would unfortunately do.

Overall the impact of the amendment would be relatively insignificant. The numbers involved will be quite small. Not everyone who enters a same-sex marriage will be entitled to an occupational pension, so survivor benefits may not arise in the first place. Secondly, the spouses would need to die in the right order for the pension right to be engaged. In any event, it is the business of these private pension funds to manage these sorts of risk and I venture to suggest that in the scheme of the pension books that they run, the scale of this risk is one that they could easily accommodate. I hope the Minister can give us some indication of the Government's thinking on the amendment and the reason for the provision in the Bill as it currently stands.

Hugh Robertson: I thank the hon. Lady for tabling the amendment. As she correctly said, this is a substantive amendment that removes the exception in the Equality Act 2010 that allows occupational pension schemes only to take into consideration accruals from 2005 for the purpose of survivor benefits for those in a civil partnership or a same-sex marriage. The exception does not apply to contracted-out rights. Occupational pension

schemes that have contracted out of the state second pension have different requirements for calculating survivor benefits, which have to reflect benefits that would be payable under the state pension.

When civil partnerships were introduced in 2005, an exception was inserted into then legislation, now rolled over into in the Equality Act, which provided that it was not discrimination to restrict access to a benefit or facility to someone who was not married, where that benefit was payable in respect of periods of service before 5 December 2005, or was accrued before that date. In practical and easy to understand terms that means that an occupational pension scheme, which provides benefits to married couples, can restrict the provision of survivor benefits for those members in a civil partnership to accruals after the date civil partnerships were introduced. The Bill will extend that provision to apply to same-sex marriages.

The exception was introduced to prevent schemes from having retrospective financial obligations towards surviving civil partners that they would not have taken into account in their scheme funding assumptions. The hon. Lady and I have discussed this before. However, the exception sets out the minimum that pension schemes have to do to comply with equality law should they wish to provide survivor benefits. It does not stop them treating all members, whether in a civil partnership, an opposite-sex marriage or, under this Bill, a same-sex marriage, exactly the same. Indeed, as the hon. Lady mentioned, around two thirds of schemes already provide more than this required minimum.

In drawing up these regulations, we tried to balance the interests of all the parties involved in a pension scheme, both those who will draw in the future and those who have contributed in the past. We are absolutely committed to equality for those who are either in a civil partnership or a same-sex marriage, but we have to balance that against the additional and retrospective financial burdens on schemes that would arise from removing this exception. We are very conscious that defined benefit schemes already face pretty tough economic conditions.

The hon. Lady referred to the case brought by Liberty. I am bound to tell her that the Government do not agree with the finding in that case and are in the process of considering our response. As with any issue of this sort, the power to resolve it does not lie solely within my Department or that of my hon. Friend the Under-Secretary of State for Women and Equality. It requires work with the Department for Work and Pensions and, indeed, the Treasury. As a result of the need to consult with them, and the uncertainty with the Liberty case, I propose that by far the best thing for me to do today is to make an undertaking to take this away and to consult with colleagues across Government. Please do not take that either way. It does not mean that we will reject it or accept it—it simply means that we will take it away and look at it. I do not want anybody getting too excited just yet. We will return to the matter in substantive form at Report stage.

Kate Green: I am grateful for the Minister's response. As he says, we discussed this amendment some time prior to the Committee's sitting. He is right to draw attention to a number of aspects that mean that there should be some kind of investigation into the implications of what is proposed in this amendment. He is right to allude to the possibility that the Government may yet take steps in response to the Walker decision, which could affect the likely continuation of this kind of provision either way.

It is also right to say that the pensions industry has been responsive. As the Minister says, two thirds of the industry have already offered more generous survivor benefits and there may be scope to have further discussions with the industry also. If they do not see any difficulty with this amendment, I am sure that the Minister and his fellow Ministers would want to take account of that attitude too. In the scheme of things, I venture to suggest this would not be a huge burden on the industry. But of course it is right that those discussions should take place. I very much welcome the Minister's assurance that time will be taken now to investigate possibilities properly and perhaps identify any potential difficulties that have not yet occurred to me. On that basis, I am happy for the Committee to withdraw my amendment and I look forward to discussing this matter again, if necessary, on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Kate Green: I beg to move amendment 62, page 34, line 4, in schedule 4, at end insert—

(c) a woman who is married to a woman who is her spouse where—

(i) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and

(ii) the marriage subsisted before the time when that certificate was issued.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 63, page 34, line 22, in schedule 4, leave out 'after "partner's" insert "or surviving same sex spouse's".' and insert '—

(a) after "partner's" insert "or surviving same sex spouse's";

(b) at end insert "but this limitation does not apply to a surviving same sex spouse by virtue of gender recognition as defined in (4C) below.".'.

Amendment 64, page 34, line 21, in schedule 4, at end insert—

'(2A) In subsection (3) after "widow's", insert "or a survivor same sex spouse's, where within (4C) below,".'.

Amendment 65, page 34, line 22 , in schedule 4, at end insert—

'(3A) After subsection (4B) insert—

(4C) A surviving same sex spouse is 'a same sex spouse by virtue of gender recognition' where she was married to—

(a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and

(b) the marriage subsisted before the time when that certificate was issued.".'.

Amendment 66, page 34, line 29, in schedule 4, leave out

'is a man married to a woman, and the earner'

and insert

'is a man married to a woman, or a woman within (4) below who is married to a woman, and the earner'.

[The Chair]

Amendment 67, page 34, line 32, in schedule 4, leave out

'is a married woman, a man married to a man, or a civil partner, and the earner dies'

and insert

'is a married woman except within (4) below, a man married to man, or a civil partner, and the earner dies'.

Amendment 68, page 34, line 34, in schedule 4, at end insert—

'(4) A woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, whose marriage subsisted before the time when that certificate was issued.'.

Amendment 69, page 34, line 35, in schedule 4, leave out

', in subsection (4), for "widower or surviving civil partner of an earner" substitute "widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner,".'

and insert

'—

(a) in subsection (4), for "widower or surviving civil partner of an earner" substitute "widower of a female earner, the survivor of a marriage with an earner of the same sex, or the survivor of a civil partnership with an earner,";

(b) at the end insert—

"(5) The limitation in subsection 4 shall not apply to the survivor of a marriage with an earner of the same sex in which the survivor was married to—

(a) a spouse who was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and

(b) the marriage subsisted before the time when that certificate was issued.".'.

Kate Green: With the Committee's permission, I would like to talk about these amendments as a package rather than to go through them individually. They are quite complex when looked at in isolation but they tell a story which, again, the Minister and I have had the opportunity to discuss before the Committee's sitting this afternoon. We are now talking about a very small group of people who are at risk of being adversely affected by the provisions of this Bill—ironically, because this Bill is, in other respects, improving the position of these people. I am sure that it is not the Government's intention to give with one hand and take away with another. It is unfortunate that this would be the consequence as the Bill is currently drafted.

We are talking about couples who have married in an opposite-sex marriage and whose marriage may have existed over many years. One member of the couple may have considered the possibility of undergoing gender reassignment but may have felt that they would not want to do that because, in reassigning their gender, the marriage would be dissolved. The opposite-sex marriage will therefore have continued until now when the Bill offers them the possibility of undergoing gender reassignment while allowing the marriage to continue. This is a welcome provision of this Bill. However, as the Bill currently stands, it has the perverse effect of preventing the surviving widow in that marriage from retaining pension rights that she would enjoy if that gender reassignment did not take place.

Therefore, in the case of a woman whose spouse is a woman by virtue of a full gender recognition certificate and the marriage existed before the certificate was issued, my amendment would ensure that her entitlement to survivor's benefits—whether from contacting-in or contracted-out schemes—are not reduced when they become a same-sex married couple. There would be no new cost at all to the Exchequer or to pension fund providers from this amendment. Of course, the potential saving that they might enjoy were these amendments not passed would be lost, but I would argue that this is a very small saving indeed.

We know from our oral evidence session with Paula Dooley of the Gender Identity Research and Education Society that the issue is a real concern for people for whom gender reassignment is a possibility. They are placed in the invidious position of either undergoing the reassignment that they want and is right for them but losing their spouse's pension rights in the process or not undergoing gender reassignment that they want to have, and which their partner supports, in order to protect their partner's pension rights.

3.15 pm

That issue arises because the Bill makes provision for same-sex married couples to be treated in the same way as civil partners for the purpose of survivors' benefits. We have already discussed the situation in relation to contracted-in pensions, where rights date back to 2005. For contracted-out schemes, the position is a little different. Those schemes are required to make provisions for survivor benefits for civil partners based on the contracted-out rights accrued since 6 April 1988, in line with rules for widowers; however, for widows, the rights to survivors' benefits in contracted-out schemes apply in respect of service back to 1978. There will therefore be a very, very small group of women who stand to lose that extra 10 years of access to survivor benefits if their partner undergoes gender reassignment and the Bill is not changed.

Again, I am sure that the Government did not intend that as a consequence of what is in every other way a very laudable and welcome attempt to enable marriages to continue if one partner from an opposite-sex marriage undergoes gender reassignment. Given the commitment that the Minister has just given to investigate the position that we discussed in relation to the previous amendment, I am hopeful that he will be similarly able to go and investigate the possibilities available to avoid this particular inequity, which I am sure is not intended and would be very regrettable. It is very difficult to say how many people would be affected, but the numbers must be very small: the number of transsexual people in the UK is fairly small and the amendment would affect a subset of that already small group.

I would be grateful for the Minister's response to this concern. I am hopeful, given his response to the earlier amendment, that that response will be a helpful one; it will certainly be very important to a small group of transgender people who are very concerned about this issue.

Hugh Robertson: Like the hon. Lady, I will speak to the amendments as a whole, as together they would operate to achieve a single objective. As she has correctly said, the amendments would mean that widows of

marriages that become same-sex marriages as a result of their spouse's change of legal gender during the marriage would be treated the same as widows of opposite-sex marriages for the purposes of survivor benefits in occupational pension schemes.

We have considered the evidence submitted to the Committee by stakeholders—in particular in this regard, the evidence submitted by the Gender Identity Research and Education Society—very carefully. We recognise that the Government's policy of treating same-sex marriages in the same way as civil partnerships for occupational pension survival benefits will create a problem in relation to survival benefits for the relatively small number of women whose husbands acquire female gender during their marriage. It has been put to us—indeed, the hon. Lady mentioned this point—that that could deter a transsexual person from seeking to change their legal gender because of the financial impact on their wife.

In the light of those submissions, we have looked again at the issue. We understand that for a very small number of people loss of those benefits would indeed be a serious problem; however, I think we all agree that the issue is complex and needs to be looked at very carefully. We need to include consideration of the practical issues both for individuals and for the schemes that would be affected. We would not want to make a change that would result in significant cost to pension schemes and to the public purse.

The hon. Lady is absolutely right that the issues here are quite complex. The potential for creating a legal precedent is very clear; that would open up other areas to legal challenge. We would want to consider all those implications carefully before coming to a decision. I can say absolutely to the hon. Lady that I am happy to take this away and look at it carefully with colleagues across Government. As with the previous amendment, I make it clear to her that that is not an indication that we will accept an amendment, or the reverse; it is simply an undertaking to look at the matter carefully, and bring it back on Report.

Kate Green: I am heartened by the Minister's response. He is right to say that the issue is complex, but I hope that I have interpreted his tone correctly: he is indicating that the Government hope that a solution to this conundrum can be found that will remove people from the invidious position of making a choice that is either not in the interest of one partner or the other, or of the couple as a whole. I look forward to him returning, before Report, with a view from Government. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 4 agreed to.

Clause 12 ordered to stand part of the Bill.

Schedule 5

Change of gender of married persons or civil partners

Kate Green: I beg to move amendment 13, in schedule 5, page 40, line 18, at end insert—

'Reinstatement of marriages annulled to permit a person to obtain a gender recognition certificate

9A Schedule 4 (Effect on Marriage) at beginning insert:

(1) This section applies to a formerly married couple whose marriage was annulled in order to permit one or both partners to that marriage to obtain a full gender recognition certificate provided that:

(a) the marriage was annulled following the coming into force of the Gender Recognition Act 2004, and

(b) the formerly married couple either:

(i) formed a civil partnership with each other within six months of the annulment of their marriage, and continue to maintain their civil partnership, or

(ii) have continued to live together in the same household since the annulment of their marriage, and

(iii) both partners to the former marriage give notice that they wish their marriage to be reinstated - with effect from the date that it was annulled.

(2) When notice is given under section (1)(b)(iii), the marriage shall be reinstated with effect from the date it was annulled.

(3) In such circumstances the continuity of the marriage shall not be affected in any way and all legal rights that accrued to either party to that marriage will be reinstated - including the right to pensions, tax status in the UK, rights to property and inheritance.

(4) In those cases where the couple subsequently formed a civil partnership, the civil partnership shall be set aside.

(5) The couple whose marriage is reinstated shall be compensated from public funds for the costs they incurred in annulling the marriage, separating their financial affairs, forming a civil partnership and in respect of their costs incurred in the UK or abroad as a result of the annulment of their marriage."'.

The Chair: With this it will be convenient to discuss the following:

New clause 14—*Civil partnerships: change of gender*—

'(1) If one of the parties in a civil partnership changes their gender under the Gender Recognition Act 2004, the civil partnership may continue, provided that both parties so elect.

(2) Subsection (1) applies only if a full gender recognition certificate is issued after the civil partnership has been entered into.'.

New clause 17—*Applications for gender recognition certificates following the coming into force of this Act*—

'An application for a gender recognition certificate under the Gender Recognition Act 2004 made by a person who was married at the time that Act came into force, has undergone surgical treatment for the purpose of modifying sexual characteristics in the period since the coming into force of the 2004 Act and has remained married shall be treated as if it was an application under section 27(3) of the Gender Recognition Act 2004.'.

Kate Green: Amendment 13 relates to marriages where one member of the couple has undergone gender reassignment. Until the provisions put forward in the Bill, when that happened in an opposite-sex marriage, the marriage was annulled. It was obviously impossible, prior to this Bill, for same-sex marriages to exist. If one member of a couple changed gender, it meant, by definition, that it was a same-sex relationship, and the marriage ended as a result.

[Kate Green]

I understand that we should be wary of retrospective legislation. This would apply to a small group of people who have been hit particularly hard by having to make the choice to end the marriage in order to undergo gender reassignment, while wanting to continue in all other respects as a married couple, and have done so since the Gender Recognition Act 2004.

Amendment 13 would provide that where couples have been forced to have their marriage annulled in those circumstances, but have continued to live together as a couple and continue to do so when the Bill is enacted, that marriage would be reinstated. There would, as it were, be no break in the nature of the marriage. I would argue that that was very much in the spirit of the Bill, as regards couples who have not undergone gender reassignment and who wish to take advantage of the provisions in the Bill.

New clause 17 relates to provisions affecting couples where one member applies for a gender recognition certificate. It seeks to replicate the fast-track procedure brought in at the time of the 2004 Act. There will be some couples who, when that Act was passed, took the decision that the partner who wanted gender reassignment would not undergo that process, because they knew it would bring the marriage to an end. It was very welcome that the 2004 Act provided a fast-track procedure for people who may have waited many years to undergo legal gender reassignment. For those who have waited even more years because they wanted to protect their marriage, the new clause would offer the possibility of a fast-track procedure.

The new clause does not seek to specify that fast-track procedure in detail. It could be modelled on the procedures laid out in section 27(3) of the 2004 Act, but some elements of that provision need further tweaking in response to the situation that now arises under the Bill. None the less, I hope that the Minister is sympathetic to the intention behind the new clause.

New clause 14 takes us back to an earlier discussion about the possibility of opposite-sex civil partnerships, albeit only in relation to parties who have undergone gender recognition. The Minister has already said that the Government intend to reconsider the matter before Report. I am not opposed to the intention behind the new clause, but I hope that the Committee members who tabled it are willing to wait for the Government to come back on that issue. I would therefore not support the amendment being implemented with immediate effect.

Stephen Gilbert: I welcome a huge amount of what the hon. Member for Stretford and Urmston said, and the intentions behind her amendments, and those in the name of my hon. Friends the Members for Bristol North West and for Cambridge (Dr Huppert), and the hon. Member for York Central (Hugh Bayley). Although this issue affects only a small number of people, it is recognised that it does so in a deleterious way, effectively telling them, after they have gone through the pain of gender transition, that the marriage from which they took a huge amount of emotional strength through the transition is no longer valid, and in fact never existed. We need to deal with that.

The hon. Member for Stretford and Urmston correctly identified an historical problem with the 2004 Act, whereby if one spouse transitions and seeks to obtain gender recognition, the marriage must be annulled. I think that that was probably based on the partially erroneous view that couples would almost always want to split up when one partner transitions, but it was also a result of the lack of availability of same-sex marriages at the time.

The Bill allows marriages to continue after legal gender recognition, but does nothing to fix those marriages that have been lost to people who went through the process before the Bill's passage. Amendment 13 goes some way to fixing that, as the hon. Lady outlined. I join her in seeking reassurance from the Minister of State that the Department is actively considering ways to resolve that. He has indicated to me that that is so in conversations, and I should like him to put that on the record today. I hope that we are able to resolve the matter before Report; none the less, colleagues may wish to return to it on Report if it is not resolved before then.

The Parliamentary Under-Secretary of State for Women and Equalities (Mrs Helen Grant): It is a pleasure to serve under your chairmanship, Mr Streeter.

Amendment 13 would amend schedule 5 to restore marriages previously entered into that have been ended to enable one party to obtain gender recognition. It applies to couples who have annulled their marriages to enable one party to obtain gender recognition and who have subsequently entered into civil partnerships, or who have continued to live together in the same household. The amendment would restore all rights that the couples may have lost or had curtailed following their marriage ending. It would also allow couples to obtain compensation from public funds for any costs they had incurred as a result of the annulment.

I understand the concerns that have prompted Committee members to propose the amendment. The Government have great sympathy for couples who were required to make the very difficult choice as to whether to end their marriage to enable one of the parties to obtain gender recognition.

3.30 pm

However, I cannot support the amendment. We have to take the law as we find it. It is not possible simply to undo the fact that the previous marriage was lawfully ended. Such a retrospective change could also have unpredictable consequences, in terms of any rights and responsibilities that the couple had accrued since their marriage was annulled. As a result, couples may find themselves worse off than they currently are. For example, ending a marriage can, in some cases, mean that a person gets a higher rate of state pension as a divorcee. I appreciate that some transsexual people in such a situation may be disappointed by this, but we need to ensure that people's legal relationship status is completely clear at all times in the eyes of the law.

New clause 14 would allow couples to stay in a civil partnership where one party obtains gender recognition. It would therefore create opposite-sex civil partnerships. We have been clear from the start that the Bill does not amend the Civil Partnership Act 2004 to extend civil

partnerships to opposite-sex couples; consequently, the new clause would create an anomaly. I therefore cannot accept it.

However, the hon. Member for St Austell and Newquay can be assured that the Bill will enable couples in civil partnerships to convert to a marriage before one party obtains gender recognition, and to stay in this marriage following gender recognition being granted. A conversion of this kind will not constitute a break in the relationship for the purposes of any rights that may have accrued during the civil partnership.

Finally, new clause 17 seeks to reintroduce the so called fast-track procedure in section 27 of the Gender Recognition Act 2004. Section 27 expired on 3 April 2007 and new clause 17 seeks to resurrect it for those transsexual people who would have been eligible to apply under the fast-track procedure, but who may not have done so because of the marriage bar. Again, I have considerable sympathy for those applicants and hope that they will now feel able to apply for gender recognition.

Although I cannot accept the new clause as drafted, I am willing to consider whether something can be done to assist the transsexual people who transitioned a long time ago, who may be concerned that they will be unable to produce the medical evidence from the required medical practitioner. In doing so, we must be sure that we do not just reintroduce a fast-track process solely for those who were married at the time the 2004 Act came into force. That would be completely unfair to other transsexual people who transitioned many years ago and who did not seek gender recognition for family or other reasons. I therefore ask hon. Members to withdraw the amendments.

The Chair: Before I call Kate Green, Mr Gilbert may wish to come back briefly on that.

Stephen Gilbert: Thank you, Mr Streeter. I am reassured by some of what the Minister has said. I look forward to further information from the Government in due course.

Kate Green: I, too, took comfort from the Minister's response on new clauses 17 and 14, and I will not press new clause 17 to a Division.

On amendment 13, although I appreciate what the Minister said, and I understand the concerns that she has expressed, it seems that if the reinstatement of a marriage were disadvantageous to a couple, they could choose not to do that. Perhaps the amendment as worded would not permit that choice to rest with the couple, but it causes me concern that they will face disappointment, as marriages that were ended only because the law insisted that they were ended cannot be reinstated now that the law is catching up with modern-day mores.

I want to press amendment 13 to a Division. I recognise the concerns that the Ministers will have, but it is important, as an expression of our concern for this small group of people, that we divide the Committee on the amendment.

3.35 pm

Sitting suspended for a Division in the House.

3.53 pm

On resuming—

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 9.

Division No. 7]

AYES

Doughty, Stephen	McGovern, Alison
Green, Kate	

NOES

Andrew, Stuart	Robertson, rh Hugh
Burrowes, Mr David	Shannon, Jim
Grant, Mrs Helen	Swayne, rh Mr Desmond
Kirby, Simon	Williams, Stephen
Loughton, Tim	

Question accordingly negatived.

Schedule 5 agreed to.

Clause 13 ordered to stand part of the Bill.

Schedule 6

MARRIAGE OVERSEAS

Question proposed, That the schedule be the Sixth schedule to the Bill.

Tim Loughton: Before we zoom further down the amendment paper, I wish to ask some questions about the schedule because it has some interesting implications. I am particularly interested in part 1, which covers the carrying out of marriages—whether same-sex or opposite-sex marriages—on consular territory, presumably at embassies throughout the world.

I have been reading the explanatory notes, and my understanding of paragraph 1(2)(c)—a condition for a same-sex marriage to be able to go ahead on a consular property overseas—is that

"the authorities of the country or territory in which it is proposed that they marry will not object to the marriage".

I am presuming therefore that certain countries that do not recognise same-sex marriage effectively have a power of veto over its taking place. I want clarification from the Minister if that is so.

Various things happen within British embassies throughout the world that are deemed to be British sovereign territory that do not necessarily accord with the practice of the host country. For example, on a visit to Tehran a few years ago during the World cup, I remember enjoying the excellent hospitality of the British ambassador at the British residence there and watching a World cup football match over a few beers. It would not have been in accordance with the customs of that country if we had stepped outside the embassy with our bottle of Stella in hand. Of course, we know that British ambassadors tend to keep a good cellar in countries where one is difficult to find and that it would be punishable by anything up to death if a person were found in possession of a good cellar and partaking of its contents, particularly if that person were one of the locals.

[Tim Loughton]

There are other things whereby the relationship between the host country and the residents and officials who operate within the British sovereign territory of an embassy or embassy property is something of a moot point. If we look back to what happened in London in the 1980s and the shooting of PC Yvonne Fletcher—those circumstances came back to our screens again last year—we see that British authorities were powerless effectively to enter the premises under diplomatic protocols to apprehend suspects or investigate that crime.

What exactly is the relationship between a host country and the ability of British officials who, under British law, would be empowered to conduct a same-sex marriage on British embassy territory in a country where same-sex marriage was not recognised? For example, in Saudi Arabia or certain other Arab countries, homosexuality is considered an offence, let alone coming together in recognised same-sex unions. Is there a power of veto by the host country? Will it be a formal power of veto, or will it be an act of effectively turning a blind eye, as happens with the Iranian authorities in respect of the British ambassador's drinks parties within the embassy compound?

4 pm

If there is a grey area around diplomatic niceties, as we all know there can be, what happens if a same-sex couple, who will be entitled to marry under British law, if the Bill passes—complying with all the criteria for marrying in the UK and therefore entitled to the same treatment on British sovereign territory in other parts of the world—when a British embassy goes ahead in good faith, with the embassy chaplain or whoever conducting their same-sex marriage on embassy premises, only for the Saudi Government or whichever authorities to tell them, "You cannot do that."? Is that marriage effectively annulled, or would it still be recognised as long as the participating couple legged it quickly out of the country, in a diplomatic bag or otherwise, because they had offended against the host country's laws?

I seek clarification about same-sex couples who, for all sorts of reasons, might want to use embassy premises overseas for their same-sex marriage. I suspect that the schedule is of very limited application. In other words, it will apply only in the, I think, 11 other countries whose jurisdictions currently recognise same-sex marriage. Either way, I seek clarification about whether the definition is right and about what happens when a marriage goes ahead but is objected to by a host country on the principle that it is illegal or not recognised under its law.

Mrs Grant: Consulates offer British nationals abroad consular marriages and consular civil partnerships by providing them with the facility in a consulate to get married or enter into a civil partnership under UK law. They can offer such services only where there are insufficient facilities for British nationals to get married or enter into civil partnerships under local laws and in host states that consent to such marriages or civil partnerships. The Foreign and Commonwealth Office currently provides consular marriage services in six countries, which are all in the middle east, and consular civil partnerships in 18 countries. It conducts an average of 37 consular marriages and 85 civil partnerships a year.

The schedule will allow the FCO to amend current legislation, so that it can offer all forms of marriage and civil partnerships overseas, including same-sex marriage, where host Governments do not object and local facilities do not exist. Given those caveats, the FCO does not expect a significant increase in the number of consular marriages that it performs each year—a matter raised by my hon. Friend.

The schedule will allow the FCO to put into good order a range of outdated marriage powers, to provide a uniform service for British nationals who wish to marry or to register a civil partnership overseas. For example, the schedule will allow the FCO to modernise how it issues certificates of no impediment, which will simplify the process of marrying overseas for all British nationals.

Kate Green: I apologise if I am anticipating what the Minister is about to say. This morning, we discussed the implications of consular marriages for Scottish same-sex couples. Is she going to comment on that?

Mrs Grant: I will touch on that issue and the one relating to Northern Ireland in a moment.

Part 3 of schedule 6 provides a power, by Order in Council, to make provision for members of the armed forces serving overseas and accompanying civilians, including both opposite-sex and same-sex couples, to marry. The provision for an Order in Council is necessary because the Foreign Marriage (Armed Forces) Order 1964, under section 22 of the Foreign Marriage Act 1892, cannot be extended to the marriage of same-sex couples. That is because section 22 currently provides that such a marriage is valid as if it had been solemnised in the United Kingdom. Such marriages, therefore, have effect under the law of every part of the United Kingdom.

Tim Loughton: I raised specific questions regarding part 1, so before the Minister goes down the blind alley of Scotland, this is an overseas schedule that applies only to territories outside the United Kingdom. With respect, what she has read out is a permutation of what it says in the explanatory note. I wanted explicit confirmation of whether in practice this will apply only to 11 other countries, to ask what happens in the specific incidence of a host country taking exception to it, and to ask about the grey area in between.

Mrs Grant: I will come back to what my hon. Friend raised earlier. On agreements, it is essential that the host country is quite happy with what we are doing. Under international law, the establishment of consular relations between states is based on the consent of the states concerned. Conducting same-sex marriages without host Government permission could be contrary to international law and risk damaging bilateral relations, which, of course, we would not want to do. So, to answer his question, if we did not have the agreement of the host country, of course it would not happen. The result of that would be that in some locations around the world, it would not happen. Numbers may not, therefore, be considerably greater than they are now. I hope that that has answered his question.

Tim Loughton: Will my hon. Friend give way?

Mrs Grant: I would like to continue, but if my hon. Friend needs to come back to me, I do not have a problem with that.

Coming back to the provision for an Order in Council, it is necessary because the 1964 order under section 22 of the 1892 Act cannot be extended to marriage of same-sex couples. That is because section 22 currently provides that such a marriage is valid as if it had been solemnised in the United Kingdom, which I think was the point that the hon. Member for Stretford and Urmston was touching on. Such marriages, therefore, have effect under the law of every part of the United Kingdom. Since there is no plan to permit the marriage of same-sex couples in Northern Ireland—I know that is a matter of interest to the hon. Member for Strangford—it is necessary to provide the order to make a new Order in Council to replace the 1964 order. The new order will authorise armed forces marriages of same-sex couples only if the couple involved would otherwise be eligible in England or Wales, not Northern Ireland or Scotland.

In relation to the marriage of a same-sex couple, the order could include provision prohibiting the use of particular religious rites or usages, such as those of the Church of England, or particular premises, such as military chapels. Or, it may specify the consents that may be required, such as the consent of religious organisations that use a particular building as a place of worship. On that basis, I commend the clause to the Committee.

Tim Loughton: I still want a point of clarification. What the Minister has said in alluding to agreements is helpful. Is she actually saying that, as a result of the Bill passing, every embassy or high commission around the world will have to seek the agreement of the host Government—whichever Government Department is responsible for marriages—before it can carry out a single same-sex marriage? If my understanding is correct, will she confirm that the Foreign Office will be doing that?

Mrs Grant: I have made the position very clear. I will repeat what I said so that it is on the record. Conducting same-sex marriages without host Government permission could be contrary to international law, which, of course, we would not want to break. At the same time, it would risk damaging bilateral relations, which, of course, we would not want to do. I think I have made the position clear.

Question put and agreed to.

Schedule 6 accordingly agreed to.

Clause 14 ordered to stand part of the Bill.

Schedule 7

TRANSITIONAL AND CONSEQUENTIAL PROVISION ETC

Amendment proposed: 31, in schedule 7, page 52, line 26, at end insert—

42 The Education Act 1996 is amended as follows.

43 Section 403 (sex education: manner of provision), after subsection (1D) insert—

"(1E) For the purposes of subsection (1A), no school shall be under any duty as a result of guidance issued, to promote or endorse any understanding of the nature of marriage that is contrary to the character and designation of the school.".'.—*(Mr Burrowes.)*

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 11.

Division No. 8]

AYES

Burrowes, Mr David	Loughton, Tim
Kwarteng, Kwasi	Shannon, Jim

NOES

Andrew, Stuart	Kirby, Simon
Doughty, Stephen	McGovern, Alison
Ellison, Jane	Robertson, rh Hugh
Gilbert, Stephen	Swayne, rh Mr Desmond
Grant, Mrs Helen	Williams, Stephen
Green, Kate	

Question accordingly negatived.

Question proposed, That the schedule be the Seventh schedule to the Bill.

Mr Burrowes: We are at an exciting point, because we are at the end of the Bill. I want to deal with paragraphs 36 and 37 of the schedule. Respectively they will add same female-sex marriage to sections 42 and 46 of the Human Fertilisation and Embryology Act 2008, which contain provisions about parenthood.

I want to raise the issue of children knowing their biological father, which, as has been said in previous debates, took up a lot of Parliament's attention. Sections 42 and 46(1), unlike sections 43 and 46(2), appear to make provision for—in effect sanctioning—informal unregulated donor insemination to be carried out at home or aboard, or assisted reproduction in unregulated or poorly regulated overseas clinics.

The Human Fertilisation and Embryology Authority has expressed concerns about the increased medical risks to children born as a result of such arrangements, without the safeguards of medical checks that are properly in place in UK-licensed clinics. It is also concerned about the increased difficulties in children being able to know who their biological father is in the future.

I do not know whether the Minister has the answers on this at his fingertips, but will he be able to provide some assurance on the greater medical risks for children who are born through informal donor insemination or assisted reproduction in unregulated or poorly regulated overseas clinics compared with those conceived in a UK-licensed clinic? Also, will he explain—this will no doubt involve some reference to another Department—what safeguards are in place for such children to know who their biological father is in the future? If I cannot have a ready response today, I would welcome a letter before the Bill is debated on Report.

4.15 pm

Hugh Robertson: I take my hon. Friend's point. Given the complications of the issue, it might be best if he wrote to me with his specific concern; I guess that it is driven by a conversation with or representation from someone. The matter is a cross-departmental one, but I will respond to him.

What I can say is that the Bill will have absolutely no effect on in vitro fertilisation or the regulation of overseas clinics.

Mr Burrowes *rose—*

Hugh Robertson: I detect that that is not quite the issue my hon. Friend is after. I would be happy for him to clarify.

Mr Burrowes: Hopefully, the question that I have raised is sufficient for the Minister to respond by way of correspondence.

I appreciate that the Bill does not seek to change the specific practical arrangements. Nevertheless, the provisions raise a question about the need for an assurance that there are safeguards in place for children to know who their biological father is in the future. That is the specific point on which the Minister may be able to gain some understanding for me from the Department of Health.

Hugh Robertson: That is a perfectly sensible and reasonable point. I will get the Department of Health to lay out the particular assurances that exist in such a situation and write to him before the Bill is debated on Report.

Question put and agreed to.

Schedule 7 accordingly agreed to.

Ordered, That further consideration be now adjourned. *—(Mr Swayne.)*

4.16 pm

Adjourned till Tuesday 12 March at five minutes to Nine o'clock.