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Bellinger v Bellinger is a case that was heard in the House of Lords on 20-21 January 2003, on appeal from the Court of Appeal and the High Court. The petitioner is a transsexual woman who went through a ceremony of marriage with a man in 1981. She asked the Courts to recognise that ceremony of marriage.

The House of Lords has found on 10 April 2003 that the marriage was not valid, because English law does not recognise any change of gender.

The Lords of Appeal were sympathetic to Mrs Bellinger's plight but their ruling confirms the Government's view that legislation will be necessary to enable transsexual people to marry in their new gender; they do not already have that right. A change in the law as sought by Mrs Bellinger must be a matter for deliberation and decision by Parliament.

The Government aims to publish a draft Bill later this session to make it possible for transsexual people to be legally recognised in their acquired gender, and therefore to marry in that gender. Substantive legislation will follow when Parliamentary time allows. Legal recognition will also make it possible for transsexual people to obtain new birth certificates and claim the State pension at the appropriate age.

The Lords of Appeal also made a Declaration of Incompatibility in relation to section 11(c) of the Matrimonial Causes Act 1973.

What is a Declaration of Incompatibility?

- The Court cannot quash primary legislation. However, the Human Rights Act 1998 gives the Court the power to make a declaration of incompatibility when it finds a provision of primary legislation is incompatible with the Convention rights (in the European Convention of Human Rights). Specifically, the European Court's rulings in the cases of *Goodwin v The United Kingdom* and *"I" v The United Kingdom* on 11 July 2002 mean that section 11(c) of the Matrimonial Causes Act 1973 is not compatible with Article 8 and 12 rights.
- The Government is committed to taking seriously any Declaration of Incompatibility made by the Courts. In this case, it will examine the judgment carefully and consider how to respond. The Government is already committed, however, to publishing draft legislation as soon as possible.