

Minister for Victims and Community Safety submission of 16 October 2023

PE2046/A: Provide birth certificates for stillborn babies

First of all, I would like to express my condolences to Debbie-Ann for her very sad loss.

The petition raises two issues: changing the gestation period cut off date from 24 weeks to 20 weeks and changing how still births are registered.

Current process for registering a still birth

When a birth or still birth takes place, informants (usually the parents) are required to provide information to registrars so the event can be registered in the relevant register. The relevant primary legislation is the [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#) (legislation.gov.uk). This provides generally that still births should be registered in the same way as births, with still births defined as where the baby has been born after 24 weeks of pregnancy, but was not born alive.

Section 13 of the 1965 Act makes provision so there is both a birth register and a separate still birth register.

Section 21 of the 1965 Act sets out additional requirements on the registration of still births. In particular, a medical practitioner or midwife who was present at the still birth, or examined the body, is required to provide a certificate of still birth (known as a Form 6), stating that the baby was not born alive and, where possible, the cause or probable cause of death, and other relevant medical information, to enable the informant to register the still birth.

Once that information has been gathered the local authority registrar can register the still birth. The registrar has to give to the informant a Certificate of Registration of Still-birth (known as a Form 8) stating that the still-birth has been registered. The informant can then arrange for a burial or cremation.

Forms 6 and 8 are forms prescribed by regulations and were last re-prescribed in 2015: [The Registration of Births, Still-births, Deaths and Marriages \(Prescription of Forms\) \(Scotland\) Amendment Regulations 2015 \(legislation.gov.uk\)](#)

The form of the register pages are also laid down in regulations made by the Registrar General and approved by the Scottish Ministers. The current forms of the register pages are in [The Registration of Births, Still-births, Deaths and Marriages \(Prescription of Forms\) \(Scotland\) Amendment Regulations 2009 \(legislation.gov.uk\)](#): please see schedule 1 for the birth register page and schedule 2 for the still birth register page. The still birth register page includes information on the child's name and sex and on the parents. An extract (copy) from the still birth register page forms the still birth certificate.

Registering still births separately contributes to statistical information regarding the health of the population and the performance of healthcare services, including comparison with other countries.

Lowering the threshold to 20 weeks

The petition suggests a birth certificate and a death certificate should be available when the pregnancy lasted for at least 20 weeks. That would require a change in primary legislation: [section 56](#) of the 1965 Act defines still birth as after the 24th week of pregnancy. This reflects that a baby born at 24 weeks or over is capable of surviving.

A change to 20 weeks for this situation would impact on the 1965 Act and other legislation. For example, there is a limit of 24 weeks for most terminations of pregnancy as set out in section 1(1)(a) of the Abortion Act 1967. In addition, the Burial and Cremation (Scotland) Act 2016 makes provision for the burial or cremation of a pregnancy loss or of a stillborn baby, also using 24 weeks and the definition of stillbirth set out in the 1965 Act. There could also be potential implications for reserved legislation, in areas such as surrogacy.

The Scottish Government has no current plans of bringing forward primary legislation to change 24 week thresholds to 20 weeks.

Pregnancy loss before 24 weeks

There is no mechanism for registering a pregnancy loss before 24 weeks. However,

a Memorial Book for those who have experienced a pregnancy or baby loss prior to 24 weeks has been produced jointly by the Scottish Government and National Records of Scotland (NRS). The Book was developed in partnership with health professionals, Royal Colleges and baby loss charities and launched on 4 October 2023.

As well as an entry in the Memorial Book, applicants will be given a commemorative certificate which is intended to give recognition and comfort to those who want to record their loss. The service is run by NRS, is free of charge, completely voluntary, no medical evidence will be required and historical applications are welcome.

Further information, including how to apply, can be found by visiting the website <https://www.nrscotland.gov.uk/registration/memorial-book-of-pregnancy-and-baby-loss-prior-to-24-weeks> by emailing MemorialBook@nrscotland.gov.uk or writing to – NRS Memorial Book Team, Room 36, New Register House, 3 West Register Street, Edinburgh EH1 3YT.

The Cremation (Scotland) Regulations 2019 provide for the cremation of a pregnancy loss or a still born baby and created the Register of Cremation of Stillbirth and Pregnancy Loss. The register was created in response to the baby ashes scandals and ensures that bereaved parents have a record of their loss.

Changing how still births and deaths are registered

Currently, under the 1965 Act, a baby must be born alive in order to have the birth recorded in the birth register and to be issued with a birth certificate. A baby must also be born alive in order to acquire their own distinct legal personality. Recording still births as births could have wider implications about the legal personality of an unborn child.

There would also be implications for primary legislation. As indicated above, section 13 of the 1965 Act requires local authorities to keep both a register of births and a register of still-births and section 21 of the 1965 Act lays down specific requirements on the registration of still births. Sections [22](#) and [23](#) of the 1965 Act make provision on death registration.

There would also be implications for IT; guidance and training; secondary legislation and, as indicated above, the way in which statistics are collected.

We do not know whether the proposal that babies who are still born should have a birth certificate and a death certificate would be favoured by other parents who have been bereaved in this way. It is possible some parents may prefer the current arrangements although we fully recognise that some bereaved parents find the current registration process for their still born baby very difficult. As a result of changes made during and after the pandemic, it is now possible to register still births, births and deaths remotely, as well as in person.

We have considered the option of retaining the still birth register but making provision so extracts from it would look just like extracts from the birth register. However, any extracts would have to state that it was an extract of an entry in the still birth register rather than of an entry in the birth register. If the extract no longer accurately replicated the entry in the register it would be necessary to provide for an exception to [section 41A](#) of the 1965 Act under which an extract from a register is sufficient evidence of the associated register entry to which it relates.

Given the points outlined above, the Scottish Government does not plan to make changes to the way in which still births are registered.

Some other organisations with an interest in the petition

The Scottish Government suggests that given the implications of providing still born babies with birth and death certificates, the Committee may wish to seek views from a variety of organisations.

Registration of events such as births, marriages and deaths in Scotland is carried out by local authority registrars, under the direction of the Registrar General. Given the front-line role local authority registrars have, the Committee may wish to write to the Society of Local Authority Chief Executives and Senior Managers, the Convention of Scottish Local Authorities and the Association of Registrars of Scotland

The Committee may also wish to write to organisations representing medical practitioners given their role in relation to death certification and to organisations representing funeral directors. The Committee may also wish to write to organisations representing the legal profession given the potential impact on the legal personality of an unborn child.

I appreciate the list of organisations above is not exhaustive and the Committee may wish to seek views from others as well.

Both NRS and the Scottish Government are happy to provide more information as required.

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