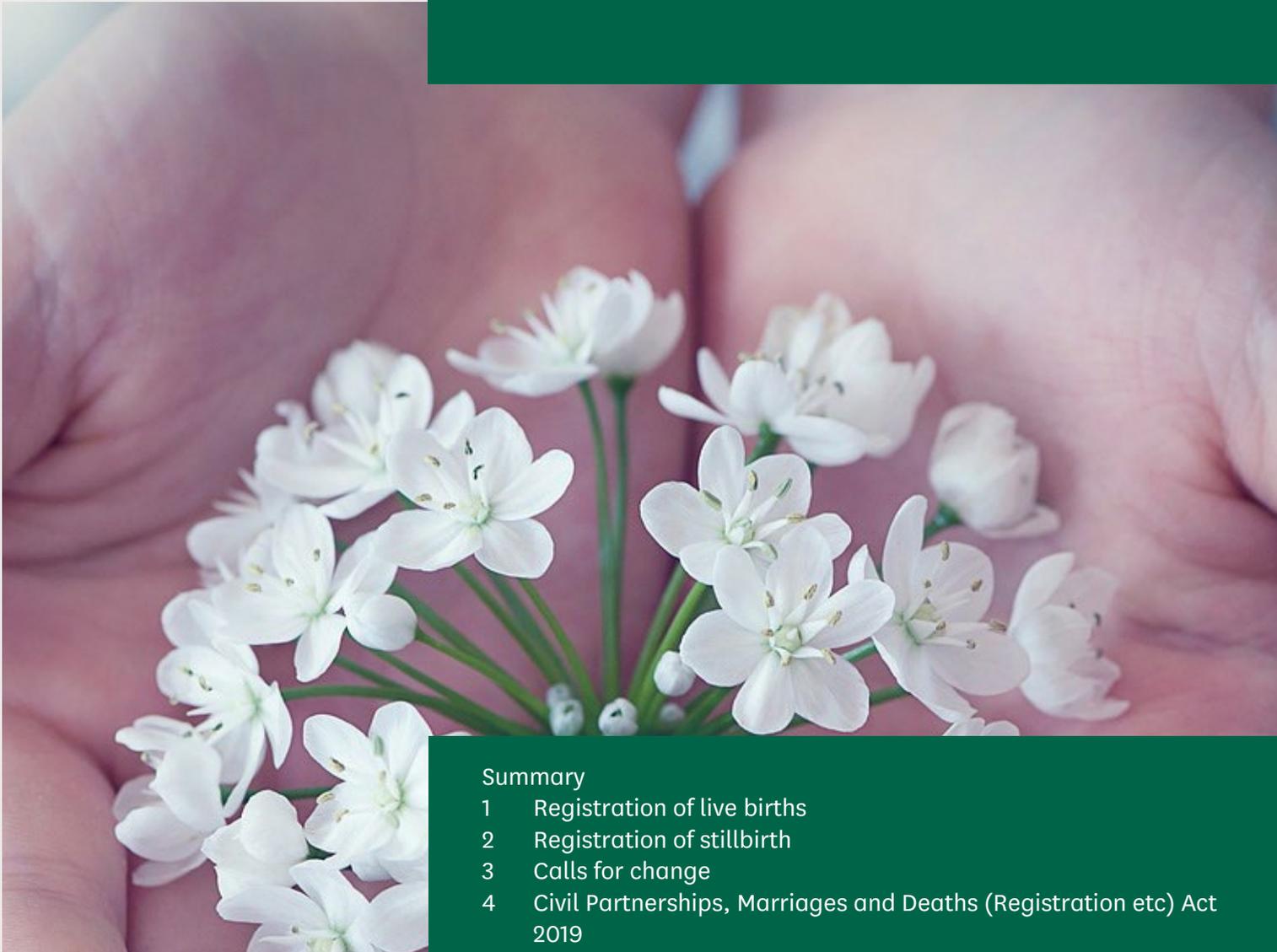


By Lisa Rowland

12 October 2023

# Registration of stillbirth



## Summary

- 1 Registration of live births
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- 3 Calls for change
- 4 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019
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## Summary

This briefing paper deals with the position in England and Wales unless otherwise stated.

### Registration of birth and subsequent death of baby born alive

The birth of a baby who is born alive must be registered, whatever the length of the completed pregnancy. The death of a baby born alive must be registered in the same way as any other death.

### Registration of stillbirth after 24 weeks of pregnancy

When a baby is stillborn (born without signs of life) after 24 weeks of pregnancy, the stillbirth must be registered in the stillbirth register. The process for registering a stillbirth combines features of both birth and death registration.

### Stillbirth before 24th week of pregnancy

There is no provision to allow the registration of stillbirths before the 24<sup>th</sup> week of pregnancy. Hospitals may issue a commemorative certificate when the stillbirth cannot be registered formally.

### Calls for change

Calls have been made for some time, both inside and outside of Parliament, for the law to be changed. Tim Loughton (Conservative) has spoken of the arbitrary nature of the 24-week threshold. He highlighted one case where twins had been stillborn either side of the threshold and were treated differently for registration purposes.

The Government has said it does not plan to change the definition of stillbirth, which is based on clinical evidence and the age of viability.

### Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019

Section 3 of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 requires the Secretary of State to arrange a report on whether, and, if so, how, the law should be changed to deal with the registration of pregnancy losses which cannot be registered as stillbirths under the Births

and Deaths Registration Act 1953. The Secretary of State must publish the report prepared under this section.

This Act started as a Private Member's Bill introduced by Tim Loughton.

## The Pregnancy Loss Review

In March 2018, the Department of Health and Social Care established the Pregnancy Loss Review. The purpose of the Review was to consider:

- the impact on families of the current threshold of 24 weeks gestation before being able, formally, to register a miscarriage if they so wish.
- whether it would, on balance, be beneficial to look at legislative options to amend existing primary legislation to allow parents to register a miscarriage if they so wish.
- options to improve NHS gynaecology and maternity care practice for parents who experience a miscarriage and other causes of baby loss.

The Pregnancy Loss Review reported in July 2023. Having consulted with parents, baby loss and bereavement charities and healthcare professionals, the Review recommended a scheme of certification for baby loss before 24 weeks of gestation. Certificates would be issued by Government and be available for those parents who would like one, regardless of the type of loss they have experienced. Certificates would also be capable of being backdated to acknowledge the loss of a baby retrospectively.

In its response to the report, the Government said the certification scheme would be tested with 1,000 bereaved families - subject to which certificates could be launched during International Baby Loss Awareness Week 2023.

# 1 Registration of live births

The birth of a baby who is born alive must be registered, whatever the length of the completed pregnancy.

If a baby lives for even a short time after being born, and then dies, both the birth and death must be registered.<sup>1</sup>

A neonatal death generally means a death within the first 28 days of life. This is distinguished from a stillbirth, where there are no signs of independent existence.

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<sup>1</sup> [Births and Deaths Registration Act 1953](#)

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## 2 Registration of stillbirth

### 2.1 Definition of “stillborn child”

The definition of “still-born child” in England and Wales is contained in [section 41 of the Births and Deaths Registration Act 1953](#) (as amended) and is as follows:

a child which has issued forth from its mother after the twenty-fourth week of pregnancy and which did not at any time after being completely expelled from its mother breathe or show any other signs of life, and the expression “still-birth” shall be construed accordingly.<sup>2</sup>

Until 1992, the threshold was 28 weeks.<sup>3</sup>

Similar definitions apply in Scotland<sup>4</sup> and Northern Ireland.<sup>5</sup>

In February 2017, the Government said it did not plan to change the definition of stillbirth, because medical opinion did not support reducing the age of viability below 24 weeks of gestation, on which the definition is based.<sup>6</sup>

In March 2020, the Government again confirmed that it had no plans to change the definition of stillbirth to include pregnancy losses before 24 weeks of gestation.<sup>7</sup>

### 2.2 Registration of stillbirth after 24 weeks of pregnancy

When a baby is stillborn (born without signs of life) after 24 weeks of pregnancy, the stillbirth must be registered in the stillbirth register. The

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<sup>2</sup> [Births and Deaths Registration Act 1953](#), s41(1)

<sup>3</sup> [Stillbirth \(Definition\) Act 1992](#), s1(1), amending the Births and Deaths Registration Act 1953, s41(1)

<sup>4</sup> [Registration of Birth, Deaths and Marriages \(Scotland\) Act 1965](#), s56(1), as amended by the [Stillbirth \(Definition\) Act 1992](#), s1(2)

<sup>5</sup> [Births and Deaths Registration \(Northern Ireland\) Order 1976](#), art 2(2), as amended by the [Stillbirth \(Definition\) \(Northern Ireland\) Order 1992](#), art 3

<sup>6</sup> PQ 62995 [on [Childbirth](#)], 10 February 2017

<sup>7</sup> PQ 24351 [on [Perinatal Mortality](#)], 4 March 2020

process for registering a stillbirth combines features of both birth and death registration.

Information about how to register a stillbirth is available on the following websites:

- GOV.UK, [Register a stillbirth](#) (England and Wales)
- National Records of Scotland, [Registration of Deaths and Still-births](#) (Scotland)
- nidirect, [Registering a stillbirth](#) (Northern Ireland).<sup>8</sup>

## 2.3 No registration of stillbirth before 24 weeks of pregnancy

There is no provision to allow the registration of stillbirths before 24 weeks of pregnancy.

Hospitals may issue a commemorative certificate when the stillbirth cannot be registered formally.

## 2.4 Guidance

The Royal College of Obstetricians and Gynaecologists' good practice note, [Registration of Stillbirths and Certification for Pregnancy Loss Before 24 Weeks of Gestation](#) (PDF), includes a statement on the interpretation and implementation of registration law:

...the legal advisors for the Department of Health and the Office for National Statistics have agreed that a fetus that is expelled after 24 weeks of pregnancy, provided it was no longer alive at the 24th week of pregnancy (this fact being either known or provable from the stage of development reached by the dead fetus), does not fall within the category of births to be registered as stillbirths... This interpretation is also accepted by the General Register Office for Scotland and the General Register Office for Northern Ireland.<sup>9</sup>

The Practice Note also includes a number of questions and answers in relation to pregnancy loss both before and after 24 weeks of gestation.

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<sup>8</sup> Links accessed 12 October 2023

<sup>9</sup> Royal College of Obstetricians and Gynaecologists, [Registration of Stillbirths and Certification for Pregnancy Loss Before 24 Weeks of Gestation](#) (Good Practice No. 4) (PDF), January 2005, p1, para 3

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## 3 Calls for change

Calls have been made for some time, both inside and outside of Parliament, for a change in the law relating to the registration of stillbirth before the threshold of 24 weeks of gestation.

### 3.1 Private Member's Bill

On 1 July 2021, Baroness Benjamin (Liberal Democrat) introduced a Private Member's Bill, [Certificate of Loss Bill \[HL\]](#).<sup>10</sup> The Bill had the following long title:

A Bill to make provision for a certificate to be issued to mothers in respect of miscarried and still-born children not eligible for registration under the Births and Deaths Registration Act 1953; to establish a database for archiving the certificate and recording information about the miscarriage or still-birth; and for connected purposes.

The Bill made no further progress following the prorogation of the 2021-2022 session of Parliament.

### 3.2 Parliamentary debate

Tim Loughton raised the issue on several previous occasions, including:

- In January 2014, he introduced a Private Members' Bill under the Ten Minute Rule, the [Registration of Stillbirths Bill 2013-14](#).<sup>11</sup> At First Reading on 14 January 2014, Tim Loughton said the definition of stillbirth would be based on the experience of giving birth:

My Bill would provide for the official registration of stillborn babies below 24 weeks' gestation. It would not be based on a crude time threshold of what is deemed a viable foetus, but on the experience of giving birth.<sup>12</sup>

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<sup>10</sup> HL Bill 39

<sup>11</sup> Bill 153 of 2013-14

<sup>12</sup> [HC Deb 14 January 2014 c728](#)

This Bill did not proceed any further.

- On 13 October 2016, in a debate on [Baby Loss](#), Mr Loughton spoke of the arbitrary nature of the 24-week threshold:

If someone happens to give birth to a stillborn child after 23 weeks, six days and 23 hours, that child never existed in the eyes of the state and is to all intents and purposes a miscarriage. If that child had clung on for another couple of hours and been stillborn beyond the 24-week threshold, it would be a child in the eyes of the state. That is an extraordinary anomaly in the law which we need to address.<sup>13</sup>

Tim Loughton highlighted one case where twins had been stillborn and were treated differently for registration purposes:

...a woman ... had twins, one of whom was stillborn before 24 weeks. The other survived and was tragically born stillborn after 24 weeks, but in the eyes of the law she only had one baby. How absurd is that? That is why the law needs to be changed.

That stark difference surely cannot be right. It adds insult to the unimaginable pain that the parents have already had to suffer.<sup>14</sup>

## 3.3

## Petitions

There have been several petitions on the issue, including, for example:

### Change.org

- [Allow registered birth certificates for children born from 20 weeks](#) – received 371,143 signatures.

### UK Government and Parliament Petitions

- [Amend the Births and Deaths Registration Act 1953 to include all pregnancy loss](#) - petition closed early on 3 May 2017, because of General Election, with 10,850 signatures.

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<sup>13</sup> [HC Deb 13 October 2016 c505](#)

<sup>14</sup> [HC Deb 13 October 2016 c506](#)

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## 4 Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019

### 4.1 The Act

[Section 3](#) of the [Civil Partnerships, Marriages and Deaths \(Registration etc\) Act 2019](#) provides for a report on registration of pregnancy loss:

The Secretary of State must make arrangements for the preparation of a report on whether, and if so how, the law ought to be changed to require or permit the registration of pregnancy losses which cannot be registered as still-births under the Births and Deaths Registration Act 1953.<sup>15</sup>

The Secretary of State must publish the report prepared under this section.<sup>16</sup>

### 4.2 Debate on the Bill

The 2019 Act started as a Private Member's Bill introduced by Tim Loughton (Conservative), who came fifth in the Private Members' Bill ballot which took place in June 2017. In July 2017, he introduced the [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill 2017-2019](#) (PDF) ("the Bill").<sup>17</sup>

Information about the Bill is provided on the [Bill page on the Parliament website](#).

Another Library briefing paper provides further information: [Commons Library Analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#).<sup>18</sup>

#### Second reading

At second reading, Tim Loughton set out the purpose of Clause 3:

The Bill will simply require the Government to hold a review of how we can do better and come up with a simple scheme that could have a huge impact on many grieving parents. It has nothing to do with

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<sup>15</sup> [Civil Partnerships, Marriages and Deaths \(Registration etc\) Act 2019](#), s3(1)

<sup>16</sup> As above, s3(4)

<sup>17</sup> [HC Deb 19 July 2017 c875](#)

<sup>18</sup> 25 October 2018

changing the law on abortion, and that debate is for another day and another piece of legislation. I have deliberately not been prescriptive about what form the review should take, but I trust the Government to do the right thing here and I think we are pushing at an open door.<sup>19</sup>

Karen Lee, who was then Shadow Home Office Minister, said:

We agree that stillbirths that occur before 24 weeks should be formally acknowledged and registered, but by no means would we want to see such a measure used to undermine abortion rights and a woman's right to choose.<sup>20</sup>

Victoria Atkins, who was then a junior Home Office Minister, acknowledged the range of views on the subject, and welcomed the proposed review:

Currently, parents whose babies are stillborn after 24 weeks' gestation can register the baby's name and receive a certificate of registration of stillbirth. When a pregnancy ends before 24 weeks' gestation, however, there is currently no formal process for parents to be able to register their loss legally. Some expectant parents find this to be not just distressing but devastating. The Department of Health and Social Care recognises the need to do more to support families affected by a miscarriage. Some families may want their loss to be acknowledged and registered. Others, however, may feel distressed at any mandatory requirement to do so in the circumstances of their grief. This issue must therefore be approached with great care and sensitivity.

Accordingly, I am pleased that clause 3 will provide for the Government to review this issue and to look at whether current law on registration of stillbirths should be changed to allow for the registration of pregnancy loss before 24 weeks' gestation. As part of this review, we will seek views and evidence from all interested parties. I hope that colleagues across the House will contribute to that review.<sup>21</sup>

## Public Bill Committee

In Public Bill Committee, Tim Loughton expressed some reservations about the focus of the review which had been started by the Government,<sup>22</sup> and reiterated the purpose of the Bill:

I am very clear that we need to do something specifically for women who have given birth but it happens to be before 24 weeks. We probably need to do more for the many more women who have had

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<sup>19</sup> [HC Deb 2 February 2018 c1108](#)

<sup>20</sup> [HC Deb 2 February 2018 c1115](#)

<sup>21</sup> [HC Deb 2 February 2018 cc1123-1124](#)

<sup>22</sup> See the next section of this briefing paper

pregnancy loss through miscarriage, at whatever stage. I know that other measures are being looked at...but I am focusing on the experiences of women who have given birth to children who, alas, are not alive when they are born. That is a different experience. Having a baby loss at any stage is hugely traumatic. I am not in any way trying to undermine the tragedy of everybody's loss. The problem here is that, simply because of the way the law is figured and the chronology, which is part of the law, many children who would otherwise have been registered and acknowledged do not exist in the eyes of the state.<sup>23</sup>

Victoria Atkins confirmed the Government's support for a report on the issue of registration:

Registration and certification can be an important part of acknowledging a pregnancy loss, and that is why the Government fully support the need to look into the issue more closely.

[...]

We support the requirement in this clause that a report is prepared before we consider any changes, because of the obvious sensitivities involved. In conducting this review, the Government are engaging closely with health practitioners, registrars and charities. Most importantly, the review is speaking to parents who have lost a baby before 24 weeks, to learn about their experiences and how to ensure that they receive the best care and support possible when such a tragedy takes place.<sup>24</sup>

Tim Loughton hoped that Government action would follow the proposed report:

The clause only commits to having a report at this stage, but there is an expectation that the Government will want to turn that report into legislative change—into action—to complement the good work that is going on to prevent anybody from being in the iniquitous position of realising that their child is not officially recognised by the state, by substantially reducing the number of stillbirths and miscarriages.<sup>25</sup>

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<sup>23</sup> [PBC Deb 18 July 2018 c23](#)

<sup>24</sup> [PBC Deb 18 July 2018 cc26-27](#)

<sup>25</sup> [PBC Deb 18 July 2018 c27](#)

## 5 Pregnancy Loss Review

In March 2018, the Department of Health and Social Care established the [Pregnancy Loss Review](#).<sup>26</sup> The purpose of the Review, as set out in its [Terms of Reference](#) (PDF),<sup>27</sup> was to consider:

- the impact on families of the threshold of 24 weeks' gestation before being able, formally, to register a miscarriage if they so wish.
- whether it would, on balance, be beneficial to look at legislative options to amend existing primary legislation to allow parents to register a miscarriage if they so wish.
- options to improve NHS gynaecology and maternity care practice for parents who experience a miscarriage and other causes of baby loss.<sup>28</sup>

### 5.1 Report by the Pregnancy Loss Review

#### Recognition of baby loss

The [Pregnancy Loss Review](#) reported in July 2023.<sup>29</sup> The authors of the Review said feedback from consultation meetings with parents, baby loss and bereavement charities and healthcare professionals indicated a “strong case can be made for setting up a certification scheme to give official recognition for pre-24-week gestation baby loss”,<sup>30</sup> and that official recognition would aid the grieving process.<sup>31</sup> Further, online surveys by charities such as Sands suggested “a significant majority” would be in favour of official recognition of baby loss before 24 weeks.<sup>32</sup>

The Review also highlighted several examples of international practice in relation to the certification of baby loss, with certificates currently being

<sup>26</sup> GOV.UK, [Pregnancy Loss Review Group](#) (accessed 11 October 2023)

<sup>27</sup> March 2018

<sup>28</sup> Department of Health and Social Care, [The Pregnancy Loss Review: Care and Support when Baby Loss Occurs Before 24 Weeks Gestation. Terms of Reference](#) (PDF), March 2018, p2, para 1.3

<sup>29</sup> GOV.UK, [The Independent Pregnancy Loss Review – Care and support when baby loss occurs before 24 weeks gestation](#) (PDF), July 2023

<sup>30</sup> As above, [p68, para 191](#)

<sup>31</sup> As above

<sup>32</sup> As above, [p68, para 192](#)

issued in Germany, the United States of America and a number of states in Australia.<sup>33</sup>

## Considerations for setting up a certification scheme in England for baby loss before 24 weeks of gestation

Having consulted with parents, charities, UK government officials and registrars in order to ascertain whether demand exists for a certification scheme, the authors of the Review found that the feedback – in particular from parents and bereavement charities – elicited a number of themes:

- a voluntary scheme would ensure parents are not compelled to have a certificate if they do not want one.
- recognition of pre-24-week baby loss would primarily help parents with the grieving process.
- a scheme of recognition should be as inclusive as possible, such that parents should be able to have certificates for losses at any gestation, including retrospective losses.
- medical verification of loss should be optional in order to ensure early losses or losses outside the healthcare system would not be excluded.
- a government body should issue certificates to ensure that the recognition offered is official.
- certificates should be free of charge, if possible. If parents were to be charged, any amount should be nominal, and provision made for those without the means to pay.
- information in relation to certificates should be available within healthcare settings where those experiencing baby loss may be accessing care.<sup>34</sup>

In view of the above considerations, the Review recommended a certification scheme for pre-24-week baby loss instead of a mandatory, statute-based system of registration.<sup>35</sup>

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<sup>33</sup> GOV.UK, [The Independent Pregnancy Loss Review – Care and support when baby loss occurs before 24 weeks gestation](#) (PDF), July 2023, p71, paras 197-200

<sup>34</sup> As above, [pp71-72, para 201](#)

<sup>35</sup> As above, [p72, para 203](#)

## 5.2

# Pregnancy Loss Review: recommended certification scheme

The Review recommended that a certification scheme should encompass the following:

- certificates for anyone who requests it after the experience of losing a baby before 24 weeks of gestation
- backdating of certificates without a cut-off point so historic losses may be recognised
- making certificates available to anyone, notwithstanding the type of loss they have experienced
- giving parents the option to provide medical evidence of their loss, without making such provision mandatory
- adaptable wording on certificates (including the option to add a baby's name), so parents may use their preferred language
- making certificates available to both parents, either as a download or a hard copy
- a requirement for an applicant to provide verification of their identity, to ensure certificates remain credible
- issuance of certificates by Government
- certificates that are official - rather than commemorative - in appearance, so giving families official recognition of their loss.<sup>36</sup>

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<sup>36</sup> GOV.UK, [The Independent Pregnancy Loss Review – Care and support when baby loss occurs before 24 weeks gestation](#) (PDF), July 2023, p73

## 5.3

### Government response

The Government published its [response to the Pregnancy Loss Review](#) on 22 July 2023.

The Government noted the commitment set out in its [Women’s Health Strategy](#) to introduce a pregnancy loss certificate in England following an interim recommendation from those leading the Pregnancy Loss Review.<sup>37</sup>

It said work had begun to “develop and assess” a certification service, the purpose of which would be to provide “provide comfort and help parents validate their loss”. The service, as recommended by the Pregnancy Loss Review, would be voluntary for those parents who have experienced loss at any gestation under 24 weeks, including those parents who experienced loss before the launch of certification.

The Government stated that a ‘Certificate of Baby Loss’, while providing official recognition of loss, would not constitute a legal document or provide evidence of parents’ identity or their entitlement to statutory benefits.

Parents who have been bereaved would be able to apply online for a paper certificate. A telephone service would be provided for those without the facility to make an online application.

The Government said the Certificate of Baby Loss would be tested with 1,000 bereaved families, who would receive a certificate and advise on the application process. The Government stated that, subject to testing, the certification service would be rolled out during International Baby Loss Awareness Week 2023.<sup>38</sup>

### Parliamentary question

On 1 September 2023, Feryal Clark (Labour) asked the Secretary of State for Health and Social Care in a [written parliamentary question](#) if he intended to publish details of the Certificate of Pregnancy Loss pilot.

Responding on behalf of the Government, Maria Caulfield, Parliamentary Under Secretary of State (Minister for Women and Minister for Mental Health and Women’s Health Strategy), restated the planned timetable for the certificate’s introduction:

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<sup>37</sup> Department of Health and Social Care, [Women’s Health Strategy for England](#) (PDF), August 2022, p75

<sup>38</sup> Note that on 4 October 2023, the Scottish Government launched the [Memorial Book of Pregnancy and Baby Loss Prior to 24 Weeks](#). This is provided free of charge and applicants will receive a commemorative certificate in the form of a copy of the information recorded in the Memorial Book, which is held by the National Records of Scotland (“NRS”). The application form and guidance notes for applicants can be found on the NRS webpage, [Memorial Book of Pregnancy and Baby Loss Prior to 24 weeks](#) (last updated September 2023)

As set out in the Government response in the Pregnancy Loss Review, the certificate will be tested with 1,000 bereaved families, who will be able to advise on the application process and receive a Certificate of Baby Loss. Subject to this testing, this process will enable the rollout of a certificate during International Baby Loss Awareness Week, from 9 to 15 October 2023.<sup>39</sup>

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<sup>39</sup> PQ 197112 [on [Miscarriage](#)], 11 September 2023

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