



Setting standards to improve women's health

REGISTRATION OF STILLBIRTHS AND CERTIFICATION FOR PREGNANCY LOSS BEFORE 24 WEEKS OF GESTATION

1. Background

A continuous flow of enquiries to the Royal College of Obstetricians and Gynaecologists and the Office for National Statistics highlighted the need for a statement on the interpretation and implementation of the registration law where it is known that a fetus had died *in utero* before 24 weeks but is expelled from the mother after 24 weeks.

2. The law

The law in England and Wales (Section 41 of the Births and Deaths Registration Act 1953 as amended by the Stillbirth Definition Act 1992), Scotland (Section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 as amended by the Stillbirth Definition Act 1992) and Northern Ireland (Births and Deaths Registration Order 1976 as amended by the Stillbirth Definition Northern Ireland Order 1992), requires that any 'child' expelled or issued forth from its mother after the 24th week of pregnancy that did not breathe or show any other signs of life be registered as a stillbirth.

The Department of Health has confirmed that it is **unlikely** that the law will be changed.

3. Interpretation of the law

To interpret the law in a manner which is consistent with its intention it is necessary to give the word 'pregnancy' its ordinary and natural meaning. The Shorter Oxford Dictionary defines pregnant as: 'a woman or a female mammal having a child or offspring **developing** in the uterus', while Black's Medical Dictionary defines pregnancy as 'a time when a woman carries a **developing** baby in her uterus'. Adopting the usual and ordinary meaning in circumstances where it is clear or known to the doctors that a fetus is no longer alive and developing it follows that the woman carrying that fetus is not pregnant with that particular fetus. If she were bearing twins or triplets she would, however, still be pregnant with the surviving fetus(es).

In circumstances where there is a fetus papyraceus, for instance, present at the birth of a live baby born after 24 weeks of gestation, it would be clear from its stage of development that the fetus papyraceus had died in the womb at a stage prior to the 24th week of pregnancy. Thus the woman can be taken not to have been pregnant with that fetus on giving birth to the surviving child or for the purpose of the legislation after 24 weeks of pregnancy.

On the above analysis, 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 under the above Acts. This interpretation is also accepted by the General Register Office for Scotland and the General Register Office for Northern Ireland.

4. Questions and Answers (Q&A)

4.1 What is the purpose of this Q&A section?

This Q&A section has been written to help health professionals working under the legislation relating to stillbirths. These answers should not be used for patient information purposes.

It is acknowledged that this can be a very difficult area and this Q&A section cannot provide all of the answers for all situations. Instead, it aims to provide a straightforward document to assist health professionals interpret and apply the law.

4.2 What is the law relating to the registration of stillbirths?

The current law on stillbirth registration as set out in the Births and Deaths Registration Act 1953 (as amended by the Still-Birth (Definition) Act 1992), Section 41, 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’

If a child is born dead in the circumstances set out in the Act, the doctor or midwife will issue a medical certificate of stillbirth that enables the woman or couple to register the stillbirth. This is entered on to the stillbirth register, which is separate from the standard Register of Births. The woman or couple is then issued with a Certificate of Stillbirth and the documentation for burial or cremation.

The Act can be applied to most situations without difficulty but there are some cases where it is more difficult.

4.3 What should happen in a situation where it is known that the death of a fetus (or fetuses) occurred before 24 weeks of pregnancy have elapsed but it is then delivered at a later date?

When it is known that one or more fetuses have died *in utero*, either naturally or through a medical intervention such as selective reduction, it can be said that the pregnancy of that fetus (or fetuses) has ended. It may be that there are other continuing pregnancies in the same womb but the pregnancy of the dead fetus (or fetuses) is no longer continuing.

This means that in a number of situations where it is known that one or more fetuses has died prior to the 24th week of pregnancy (for example where there has been a delay between a diagnosed intrauterine death and delivery, vanishing twins or selective or multifetal pregnancy reduction in multiple pregnancies), those fetuses known to have died prior to the 24th week of pregnancy would not be registered as stillbirths.

In all of these cases, there would have to be evidence that it was known that the fetus (or fetuses) had died prior to the 24th week of pregnancy and this evidence, usually based on ultrasound imaging, would need to be clearly detailed in the mother's notes in case any queries arose at a later date.

4.4 What if there is no ultrasound evidence available?

In cases where one or more fetuses have been born dead after 24 weeks of pregnancy but it was not known prior to their birth that they had died, and it is not known precisely when they died, it may be appropriate to use the stage of development of the fetus(es) as an indicator of when death occurred and as a basis for determining when that particular pregnancy ended relative to the 24-week limit. This would need to be

agreed on a case-by-case basis by the medical professionals involved; this responsibility should not be left to the attending midwife. The decision and the basis on which it was made would need to be clearly detailed in the mother's notes in case any queries arise at a later date.

Where there is any doubt about the gestational age at which the fetus died, the default position would be for medical professionals to register the birth as a stillbirth.

4.5 *Would this apply to a fetus papyraceous?*

In the case of a fetus papyraceous, it is known that the fetus must have died before the 24th week of pregnancy and thus it would be incorrect under the Act to register it as a stillbirth.

4.6 *Can NHS trusts provide certification for pregnancy loss before 24 weeks of gestation?*

NHS trusts are encouraged to develop a system of hospital-based commemorative certification for fetuses that are not classified as stillbirths. This would provide women or couples with a certificate recording their pregnancy loss before 24 weeks of gestation. However, not all women or couples will want this certificate following a pregnancy loss.

NHS trusts may wish to refer to the Stillbirth and Neonatal Death Society's publication *Pregnancy Loss and the Death of a Baby* (1995, currently under revision), which provides a generic certificate (see Appendix) that NHS trusts may wish to adapt for their own local needs, taking into account local cultural and faith groups. This publication also provides valuable advice on other aspects of helping women and couples to cope with their loss.

The Q&A was developed in association with representatives from:

- Antenatal Results and Choices
- Child Bereavement Trust
- Confidential Enquiry into Maternal and Child Health
- Department of Health
- Miscarriage Association
- Nursing and Midwifery Council
- Office for National Statistics
- Royal College of Midwives
- Royal College of Nursing
- Royal College of Obstetricians and Gynaecologists
- Stillbirth and Neonatal Death Society

This paper includes background, the law and interpretation of the law to put the Q&A section into context and was approved by the RCOG Standards Board.

The RCOG will maintain a watching brief on the need to review this guidance

SAMPLE CERTIFICATE

(Reproduced with permission from *Pregnancy Loss and the Death of a Baby*. Stillbirth and Neonatal Death Society; 1995.)

<p>This is to certify that _____</p> <p>was born to:</p> <p>(mother) _____</p> <p>and</p> <p>(father) _____</p> <p>at _____</p> <p>on _____</p> <p>after _____ weeks of gestation</p> <p>and showed no signs of life.</p> <p>*Signed _____</p> <p>Name _____</p> <p>Registered qualifications _____</p> <p>Date _____</p>

*The multidisciplinary group that developed the Q&A on *Registration of Stillbirths and Certification for Pregnancy Loss Before 24 Weeks of Gestation* recommended that the certificate should be signed by a doctor or a midwife.