

# Citizen Participation and Public Petitions Committee

18th Meeting, 2023 (Session 6), Wednesday  
6 December 2023

## PE2046: Provide birth certificates for stillborn babies

<b>Petitioner</b>	Debbie-Ann McMillan
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to enable a birth certificate to be issued in respect of any baby stillborn after 20 weeks of pregnancy.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE2046">https://petitions.parliament.scot/petitions/PE2046</a>

### Introduction

1. This is a new petition that was lodged on 6 September 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 540 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

### Action

The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

## Annexe A

### PE2046: Provide birth certificates for stillborn babies

#### Petitioner

Debbie-Ann McMillan

#### Date Lodged:

06/09/23

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to enable a birth certificate to be issued in respect of any baby stillborn after 20 weeks of pregnancy.

#### Previous action

Contacted my local MSP Clare Haughey but had no response.

#### Background information

I was 34 weeks pregnant when I thought I was going to hospital in early labour but it turned out to be the worst day of my life. My placenta ruptured which made me lose my darling angel baby, Harper Ann Mary Carruthers, who was born sleeping on 21/06/2023 at 18.33 weighing 4lb. I had a very healthy pregnancy and Harper had a mummy, daddy, two sisters and a brother who couldn't wait to meet her and love her.

Placental abruption isn't something you're told about and you're not made aware of the signs indicating an abruption.

I also wasn't aware that any babies born sleeping who do not take a breath aren't entitled to a birth certificate. "Angel mothers" should be entitled to a birth certificate and death certificate at the same time. After all, they were still our kids and human little babies. I would like to see a law change and for it to be called Harper's Law. I would like this to apply in cases where the pregnancy lasted for at least 20 weeks.

## Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in a smaller white font below it.

The Information Centre  
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition PE2046: [Provide birth certificates for stillborn babies](#), lodged by Debbie-Ann McMillan.

### Brief overview of issues raised by the petition

The petition calls on the Scottish Parliament to urge the Scottish Government to enable a birth certificate to be issued in respect of any baby stillborn after 20 weeks of pregnancy.

### Background

[National Records of Scotland](#) is a Non-Ministerial Department of the Scottish Government. It is responsible for the [administration of the registration of life events such as births, deaths, marriages, civil partnerships, divorces and adoptions](#).

[NHS Inform](#) provides information on how to register a stillbirth. To register the death, the medical certificate of cause of death or certificate of stillbirth is needed.

### Definition of stillbirth

Section 56(1) of [the Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#) defined a stillbirth as a child which had issued forth from its mother after the 28th week of pregnancy and which did not breathe or show any other sign of life.

[The Still-Birth \(Definition\) Act 1992](#), which came into effect on 1 October 1992, amended section 56(1) of the 1965 Act (and other relevant UK

legislation), replacing the reference to the 28th week with a reference to the 24th week.

The change in the definition of stillbirth was outlined in the Scottish Office letter [NHS MEL \(1992\) 48](#). This noted that the change was to bring the definition with the consensus of professional bodies about the age at which a foetus can be said to be viable.

### **SANDS (Stillbirth and Neonatal Death Society) position**

SANDS considers that the option of official recognition for pregnancy losses that occur before 24 weeks gestation should be available and that all bereaved parents must be offered equal, high quality, individualised, safe and sensitive care. Following a consultation in 2018, it reported that bereaved parents and families who had experienced a loss before 24 weeks gestation were calling for improved support, choice and official recognition of their loss. The majority (93%) supported a change to the system to enable registration pre-24 weeks, with 87% saying this should be optional. Only 14% believed registration should be mandatory<sup>1</sup>.

### **Framework on extreme preterm birth**

The British Association of Perinatal Medicine published “Perinatal Management of Extreme Preterm Birth before 27 weeks of gestation: A framework for practice”, in October 2019. This states:

“Neonatal stabilisation may be considered for babies born from 22+0 weeks of gestation following assessment of risk and multi-professional discussion with parents. It is not appropriate to attempt to resuscitate babies born before 22+0 weeks of gestation.”

### **Scottish Government action**

In March 2023, the Scottish Government announced the launch of a baby loss memorial book – this was expected to launch in Summer 2023. There will be no statutory requirement to register the loss, and all information given is voluntarily.

In his statement on the Programme for Government 2023-24 [the First Minister, Humza Yousaf MSP, committed to launching](#) the certificate and

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<sup>1</sup> SANDS personal correspondence 14 September 2023

memorial book of pregnancy and baby loss prior to 24 weeks, in September 2023.

### **Scottish Parliament action**

The Health, Social Care and Sport Committee undertook [a short inquiry into perinatal mental health in Scotland](#) in 2021 and 2022. The report noted:

“The Committee is concerned about the evidence it has heard around the lack of support for parents and families affected by miscarriage, stillbirth and the death of an infant.”

In June 2023, motion [S6M-09345](#) Supporting SANDS Awareness Month 2023 was lodged.

### **Lizzy Burgess**

Health and Social Care Team, SPICe Research  
21/09/2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## Annexe C

### 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](http://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 24<sup>th</sup> 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](mailto: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.

**Minister for Victims and Community Safety, Siobhian Brown MSP**