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CHAPTER 19 AMBIVALENT PARALLELS IN REGISTRATION AND CERTIFICATION OF (LIVE) BIRTH, STILLBIRTH, AND MISCARRIAGE

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Introduction

Decades of historical, anthropological, and socio-legal research have demonstrated that the foetus not only has an extremely complex ontological status but is also charged with a powerful potential that affects the way society deals with it and its material forms. This is particularly salient in the case of pregnancy loss, where matters of disposal and requirements for registration (or lack thereof) shape the material, social, and legal spaces occupied by this kind of experience.¹ Research has shown that certain practices around pregnancy loss in England mirror more formal legal expectations accompanying death, such as funerals and registration, although the parallels are fraught with ambivalence.²

Pregnancy loss is a relatively common reproductive event, with 20–25 per cent of all pregnancies ending in a miscarriage.³ In the United Kingdom (UK), people who experience pregnancy loss can obtain psychological or material support from third-sector organisations, such as the Miscarriage Association or Tommy’s (among others). Various pregnancy loss-focused third-sector organisations have pushed to increase the social, scientific, medical, and political visibility of reproductive loss⁴ via advocacy work and

1 Karolina Kuberska et al., “Death before Birth: Liminal Bodies and Legal Frameworks,” in *A Jurisprudence of the Body*, ed. Chris Dietz, Mitchell Travis, and Michael Thompson (Basingstoke: Palgrave Macmillan, 2020), 149–78.

2 Karolina Kuberska, “Unwitnessed Ceremonies: Funeral Services for Pre-24-Week Pregnancy Losses in England,” in *Navigating Miscarriage: Social, Medical, and Conceptual Perspectives*, ed. Susie Kilshaw and Katie Borg (New York: Berghahn, 2020), 247–76; Aimee Middlemiss, “Pregnancy Remains, Infant Remains, or the Corpse of a Child? The Incoherent Governance of the Dead Foetal Body in England,” *Mortality* 26, no. 3 (2021): 299–315, <https://doi.org/10.1080/13576275.2020.1787365>.

3 Miscarriage Association, “Background Information,” 2022 (accessed 14 November 2023), www.miscarriageassociation.org.uk/media-queries/background-information.

political lobbying to move away from treating miscarriage as a low-priority issue.⁵ These efforts, to some extent underpinned by an assumption that reproductive losses are experienced as a form of bereavement, have included lobbying for paid bereavement leave following miscarriage⁶ and creating a miscarriage register and certification system.⁷ As a result, there is a growing recognition of the bereavement that a miscarriage may cause.⁸

This chapter focuses on the bureaucratic space that certificates of miscarriage both belong and do not belong to, with a specific focus on England. In England and Wales, pregnancy loss is currently governed by legal frameworks that characterise the foetus differentially by reference to gestational stages. Foetal death from the first day of the 24th week onwards of pregnancy is classified as stillbirth, requiring the issuing of a stillbirth certificate by a medical professional and a formal registration of the stillborn baby.⁹ Conversely, foetal death occurring before or on 23 weeks and six days of pregnancy is classified as miscarriage and does not require legal registration. The lack of requirement for miscarriage registration is an area of contention in the UK (and elsewhere), as demonstrated by the range of efforts to institute some kind of formal-yet-optional recognition of pre-24-week pregnancy loss, from multiple petitions to offer official ‘certification’ for pre-24-week losses,¹⁰ to centring the mission of third-sector organisations around formal recognition of such losses.¹¹ While the Westminster government’s official position not to introduce a register of miscarriages remains unchanged, the 2022 Women’s Health Strategy for England included a commitment to providing ‘pregnancy loss certificates’ in England, with the caveat that they will not be legal documents.¹²

4 Sarah Earle et al., “Conceptualizing Reproductive Loss: A Social Sciences Perspective,” *Human Fertility* 11, no. 4 (2008): 259–62, <https://doi.org/10.1080/14647270802298272>.

5 Sarah Elizabeth Cox, “Changing the Miscarriage Story,” *British Journal of Midwifery* 30, no. 7 (2022): 211–2, <https://doi.org/10.12968/bjom.2022.30.7.366>; Sands UK, “Sands: Our Strategy 2022–2025. Saving Babies’ Lives. Supporting Bereaved Families,” 2022 (accessed 12 December 2023), https://sands.org.uk/sites/default/files/Sands_Strategy_2022-2025.pdf; Sands UK, “Sands’ Poll Results Summary in Response to Pregnancy Loss Review,” 2018 (accessed 12 December 2023), <https://sands.org.uk/sites/default/files/Sands%27%20poll%20results%20summary%20in%20response%20to%20Pregnancy%20Loss%20Review.pdf>; Saying Goodbye, “About Saying Goodbye – Support for Miscarriage and Baby and Infant Loss | Saying Goodbye,” 2022 (accessed 12 December 2023), www.sayinggoodbye.org/about.

6 Aimee Louise Middlemiss et al., “Employment Leave for Early Pregnancy Endings: A Biopolitical Reproductive Governance Analysis in England and Wales,” *Gender, Work & Organization* 31, no. 1 (2023): 75–91, <https://doi.org/10.1111/gwao.13055>.

7 Cox, “Changing the Miscarriage Story”; UK Parliament, “Paid Miscarriage Leave,” Hansard, 17 March 2022, <https://hansard.parliament.uk/commons/2022-03-17/debates/6B765FDF-1BE3-4F82-A60B-4D79579F4CEA/PaidMiscarriageLeave>.

8 Danielle Fuller et al., *Death before Birth: Preliminary Project Findings for Meeting with Representatives of the Department of Health and Social Care* (Birmingham/Bristol: University of Birmingham/University of Bristol, 2018).

9 Catherine Fairbairn, “Registration of Stillbirth,” Briefing paper, House of Commons, 1 February 2018, www.parliament.uk/globalassets/documents/commons-library/Registration-of-stillbirth-SN05595.pdf; “Still-Birth (Definition) Act 1992” (accessed 6 December 2023), www.legislation.gov.uk/ukpga/1992/29/section/1.

10 See, e.g., Sarah Henderson, “Allow Registered Birth Certificates for Children Born from 20 Weeks,” Change.org, 14 January 2017, www.change.org/p/department-of-health-uk-allow-registered-birth-certificates-for-children-born-from-20-weeks.

11 Saying Goodbye, “About Saying Goodbye – Support for Miscarriage and Baby and Infant Loss | Saying Goodbye.”

Further details of what this process would entail were published in the Government Response to the Pregnancy Loss Review (PLR) in July 2023¹³ and are discussed in detail later in this chapter. Throughout this chapter, we describe this as a system of ‘certification’ as the details announced to date do not include provision for registration in a formal sense nor do they detail whether there will be a government repository that records the issued certificates. The primary focus instead is on the certificate to be made available to parents in recognition of their loss while not being a legal document.

We start with an examination of the practices and consequences of formal registration and certification processes that are associated with death, birth, and stillbirth.¹⁴ Consideration of these practices gives rise to two intertwined but distinct ways in which registration and subsequent issuing of a certificate (i.e., certification) operate. First, registration and certification have certain tangible material benefits often deemed consequent to certification but, in fact, more accurately understood as consequent to the status that registration is a marker of. Registration of birth, death, or stillbirth is often the mechanism through which access to parental leave and certain benefits (e.g., child benefits or funeral benefits) is mediated. The process of accessing these benefits often requires evidentiary proof, in the form of a certificate, that the relevant event (e.g., live birth or stillbirth) happened. Second, there is a less tangible – although no less important – symbolic function of registration and certification. For many, registration and certification is importantly linked to recognition.¹⁵ In the contexts of births, deaths, and stillbirth, the process can operate as an acknowledgement of existence or of a certain relationship status being bestowed on an individual or individuals.¹⁶ In the sphere of reproductive loss, registration has been emphasised as an important moment of recognition of both the experience of pregnancy and parenthood; the certificate also acts as an important and tangible piece of evidence of the birth, or, more profoundly, the existence of the person/entity who never had the chance to ‘live’.¹⁷ The certificate exists in the world and can be pointed to as proof of what happened and who existed. As such, registration and certification have both material and symbolic values that, when teased

12 Department of Health & Social Care (DHSC), “Women’s Health Strategy for England,” Policy paper, 30 August 2022, www.gov.uk/government/publications/womens-health-strategy-for-england/womens-health-strategy-for-england.

13 Department of Health & Social Care (DHSC), “Government Response to the Independent Pregnancy Loss Review: Care and Support When Baby Loss Occurs before 24 Weeks’ Gestation”, Policy paper, 22 July 2023, www.gov.uk/government/publications/government-response-to-the-independent-pregnancy-loss-review/government-response-to-the-independent-pregnancy-loss-review-care-and-support-when-baby-loss-occurs-before-24-weeks-gestation.

14 Andrew Bainham, “What Is the Point of Birth Registration?” *Child and Family Law Quarterly* 20, no. 4 (2008): 449–74; Gayle Davis, “Stillbirth Registration and Perceptions of Infant Death, 1900–60: The Scottish Case in National Context,” *The Economic History Review* 62, no. 3 (2009): 629–54, <https://doi.org/10.1111/j.1468-0289.2009.00478.x>.

15 Fuller et al., *Death before Birth*.

16 Edward Higgs, *Life, Death and Statistics: Civil Registration, Censuses and the Work of the General Register Office, 1836–1952* (Hatfield: Local Population Studies, 2004); Simon Szreter, “The Right of Registration: Development, Identity Registration, and Social Security – A Historical Perspective,” *World Development* 35, no. 1 (2007): 67–86, <https://doi.org/10.1016/j.worlddev.2006.09.004>.

17 Laura Griffin, “Certifying Pregnancy Loss in Australia: Registration, Recognition, and the Colonial State,” *Australian Feminist Law Journal* 43, no. 2 (2017): 211–30, <https://doi.org/10.1080/13200968.2018.1425079>; Carol Sanger, “‘The Birth of Death’: Stillborn Birth Certificates and the Problem for Law,” *California Law Review* 100 (2012): 269.

out, (1) highlight the the ambivalent parallels between the ‘formal’ and ‘informal’ processes; and (2) highlight the limitations of proposals to extend ‘certification’ to pre-24-week pregnancy losses. Although not the focus of this chapter, many of the concerns we raise about these proposals in the sphere of reproductive loss are also relevant to the ad hoc and piecemeal evolution of the law on birth registration.¹⁸

This chapter is underpinned by the research conducted for an interdisciplinary project, ‘Death before Birth: Understanding, informing and supporting choices made by people who have experienced miscarriage, termination and stillbirth’ (2016–2018).¹⁹ The project’s goals included determining the socio-medical and legal contexts in which decisions about the disposal of the remains of pregnancy following miscarriage, termination, and stillbirth are made and investigating how professionals in England interpret guidance on the disposal of pregnancy remains. The research demonstrated a consistent discrepancy between guidance and routine praxis around the disposal of pre-24-week pregnancy remains, where the most commonly used options parallel traditional funeral rituals with limited evidence of other options being routinely offered.²⁰ Just as importantly, the research highlighted multiple parallels in the lived experiences of bereavement following different types of pregnancy losses, challenging the division imposed by differences in legal classification and reaffirming the lack of correlation between the type of pregnancy loss and the intensity of grief and bereavement experienced, while also emphasising that not all experiences of reproductive loss are experienced as a bereavement.²¹ The research evidenced a diversity of experiences of perceived ‘loss’ following miscarriage, which may correlate with gestational stage of pregnancy, but was often influenced by a range of other factors, and as such emphasised policy accommodating this breadth of views and needs. In this chapter, we consider the extent to which the proposed extension of ‘certification’ practices will cater to the needs of bereaved individuals and the limitations of these proposals. It will be important that the rollout of any policy in this area avoid the imposition of particular homogenising scripts on individual needs and be responsive to the diversity of personal experience.

The chapter starts with an overview of pregnancy loss in England, paying particular attention to the distinction in the support offered to those who experience miscarriage as opposed to stillbirth. Although both types of loss fall within the broad understanding of reproductive loss, there is a chasm between how they are treated at the legal and policy levels.²² In narrowing our focus to the particular challenges posed by registration practices, we contrast the expectations of registration in the contexts of birth, death, and

18 Julie McCandless, “Reforming Birth Registration Law in England and Wales?” *Reproductive Biomedicine & Society Online* 4 (2017): 52–8, <https://doi.org/10.1016/j.rbms.2017.07.001>.

19 This project was funded by the Economic and Social Research Council, UK (ref: ES/N008359/1).

20 Kuberska et al., “Death before Birth”; Sheelagh McGuinness, Karolina Kuberska, and Louise Austin, “Report to the Human Tissue Authority on Disposal of Pregnancy Remains (Less Than 24 Weeks’ Gestational Stage)” (School of Law, University of Bristol, 2017).

21 Fuller et al., *Death before Birth*; Karolina Kuberska and Sarah Turner, “The Presence of Absence: Tensions and Frictions of Pregnancy Losses – An Introduction,” *Women’s Studies International Forum* 74 (2019): 91–3, <https://doi.org/10.1016/j.wsif.2019.03.009>.

22 Kuberska et al., “Death before Birth”; Middlemiss, “Pregnancy Remains, Infant Remains, or the Corpse of a Child?”; Lucy K. Smith et al., “Parents’ Experiences of Care Following the Loss of a Baby at the Margins between Miscarriage, Stillbirth and Neonatal Death: A UK Qualitative Study,” *BJOG: An International Journal of Obstetrics & Gynaecology* 127, no. 7 (2020): 868–74, <https://doi.org/10.1111/1471-0528.16113>.

stillbirth with the absence of state-mandated processes regarding miscarriage. In doing so, we provide an overview of some of the informal processes that have been developed by support organisations in this area. We also give an overview of the recently introduced ‘certificate of baby loss’ service. These certificates are responsive to the needs of those who experience miscarriage as a form of bereavement and are very much geared towards the symbolic value that ‘certification’ has. Specifically, the certificates of support organisations may be found lacking in the extent to which they are not embedded in the bureaucratic spaces that procedurally link certificates with registers of events, such as births and stillbirths. Simultaneously, it could be argued that the government system does embed ‘certification’ processes within these bureaucratic processes to some extent as clear steps are taken to ensure that the process is delineated, as evidenced in the following statement:

The certificate will provide official recognition of the pre-24-week pregnancy loss, but it will not be a legal document. The certificate will not provide evidence of the parents’ identity, or entitlement to any statutory maternity or bereavement benefits.²³

In this chapter, we use ‘miscarriage certificates’ and ‘certificates of miscarriage’ interchangeably to refer to documents recognising pre-24-week pregnancy losses. However, these documents are also referred to as ‘pregnancy loss certificates’ or ‘baby loss certificates’, drawing attention to various aspects of the experience as well as presenting different social framing: from the focus on the event to the focus on the subject of pregnancy. We argue that certificates of miscarriages parallel birth and stillbirth certificates in an ambivalent way. While a certificate of miscarriage constitutes a document aiming to recognise the experience of miscarriage, the document does not refer to a formal register of that event, in which space would be assigned to preserve a record of that pregnancy outcome. Nor does the certificate mediate access to material benefits, as in the case of other certificates. Understood in this way, certificates of miscarriage parallel just one aspect of a much broader infrastructure which governs registration and certification of stillbirth, birth, and death. Certificates of miscarriage may provide a certain level of recognition, but they should not be divorced from the wider system of welfare supports which individuals may need, such as bereavement leave.

Birth, death, pregnancy loss, and the law

To understand the significance of ‘certification’ for those who experience reproductive loss, it is important to first consider the general purpose of the practice of birth and death registration and the legal framework in which it arose.²⁴ In providing an overview of the origins of the civil registration system in England, we highlight some of the key concerns that underpinned the development of this system, from the protection of property rights to the promotion of public health.²⁵ This can then be contrasted with the motivations of those who wish for increased levels of registration and certification in cases of

23 Zoe Clark-Coates and Samantha Collinge, “The Independent Pregnancy Loss Review – Care and Support When Baby Loss Occurs before 24 Weeks Gestation” (London, July 2023) (accessed 8 August 2023), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172417/Pregnancy-Loss-Review-web-accessible.pdf.

24 Higgs, *Life, Death and Statistics*.

25 Higgs, *Life, Death and Statistics*.

reproductive loss, and miscarriage in particular, which is succinctly summarised in the Government Response to the PLR as follows: ‘The purpose of issuing a certificate is to provide comfort and help parents validate their loss.’²⁶ It is our aim in this section to begin to unpick some of the mismatch that exists between the contemporary interpretations of registration and certification in terms of recognition and acknowledgement versus their more formal origins and functions.

Since the origins of the civil registration system, there has been a widening of understandings of registration from concerns about inheritance and lineage in the case of birth registration to a more public health focus.²⁷ Stillbirth registration followed a slightly different path, initially focusing on suspicion of undetected abortion and infanticide to later public and maternal health concerns.²⁸ More recent calls are based on a presumption that certificates are mechanisms for recognition (of parenthood or existence). Understanding this shift is key to evaluating policy and practice in this area.

Understanding the registration system for births and stillbirths

The current registration system requires all births and deaths in England and Wales to be formally registered and a certificate to be issued. This system of civil registration arose from the enactment of the *Births and Deaths Registration Act 1836*.²⁹ While there are many different views on the aims and objectives of this system,³⁰ prominent among these were the protection of property rights (reliant on bloodline inheritance)³¹ and the monitoring of the ‘health of the nation’ by the state.³² It was not until the early 1920s that a similar statutory requirement was introduced for stillbirths.³³ Following the *Births and Deaths Registration Act 1926*, stillbirths began to be formally recorded in England and Wales. This legislation emerged in response to the pressing maternal health crisis, particularly concerns about ‘wastage’ and suspicions that at least some stillbirths were, in fact, murder of neonates to conceal illegitimate births. Some commentators have noted that the surveillance aim may have had priority over the public health aim given that the cause of stillbirth was not formally recorded until much later in 1960.³⁴

26 DHSC, “Government Response to the Independent Pregnancy Loss Review.”

27 Higgs, *Life, Death and Statistics*.

28 Davis, “Stillbirth Registration and Perceptions of Infant Death, 1900–60”; Nadja Durbach, “Dead or Alive? Stillbirth Registration, Premature Babies, and the Definition of Life in England and Wales, 1836–1960,” *Bulletin of the History of Medicine* 94, no. 1 (2020): 64–90, <https://doi.org/10.1353/bhm.2020.0002>.

29 Higgs, *Life, Death and Statistics*.

30 Simon Szreter, “Introduction: The GRO and the Historians,” *Social History of Medicine* 4, no. 3 (1991): 401–14, <https://doi.org/10.1093/shm/4.3.401>.

31 Bainham, “What Is the Point of Birth Registration?”

32 Edward Higgs, “A Cuckoo in the Nest? The Origins of Civil Registration and State Medical Statistics in England and Wales,” *Continuity and Change* 11, no. 1 (1996): 115–34, <https://doi.org/10.1017/S0268416000003118>.

33 Davis, “Stillbirth Registration and Perceptions of Infant Death, 1900–60”; Simon Szreter and Keith Breckenridge, “Recognition and Registration: The Infrastructure of Personhood in World History,” in *Registration and Recognition: Documenting the Person in World History*, ed. Keith Breckenridge and Simon Szreter (Oxford: Oxford University Press, 2012), <https://doi.org/10.5871/bacad/9780197265314.003.0001>.

34 Davis, “Stillbirth Registration and Perceptions of Infant Death, 1900–60”; Durbach, “Dead or Alive?”

The *Births and Deaths Registration Act 1953* (England and Wales) as amended by the *Stillbirth (Definition) Act 1992* (UK) and the *Registration of Births and Deaths Regulations 1987* (England and Wales) contains the framework for registering births, deaths, and stillbirths in England and Wales. In accordance with this framework, all live births must be registered within 42 days of occurrence in accordance with very specific rules.³⁵ Once a birth is registered, a birth certificate is issued, which contains, among other items, the child's name, sex, date and place of birth, mother's name, and father's name (if provided). Similarly, there are very specific rules about registering death, with restrictions on who can do so and when this must take place.³⁶ Importantly, to register a death, a medical certificate of cause of death, completed and signed by a doctor, must be provided. Once death is registered, a death certificate is issued, which contains the deceased person's name, sex, and date and place of death. The process for registering a stillbirth combines elements of both birth and death registration.³⁷ All stillbirths must be registered within 42 days (as with a birth) and the registrar must be provided with a medical cause of stillbirth certificate (similar to death registration). Once stillbirth is registered, a certificate is provided, which, like a birth certificate, contains the baby's name (if provided) and the names of the parents. As for both birth and death certificates, the date and place of stillbirth is recorded. There are no such mandatory registration and certification requirements for miscarriage.

In recent years, pregnancy loss in England has been subject to increased scrutiny and attention at the legal and policy levels. Groupings such as the All-Party Parliamentary Group (APPG) on Baby Loss (established in 2016) have created a political space to shine a light on the needs of those who have experienced child death and reproductive loss. Sands (the Stillbirth and Neonatal Death Charity) is the secretariat for this APPG, which aims to 'develop policy that supports families dealing with the grief and loss of a baby, and to raise awareness of what more can be done by the government, Parliament or other agencies to help those affected'.³⁸ Although not historically a core focus of Sands' activity, miscarriage is now included within the ambit of the charity's bereavement care work. Each year, during Baby Loss Awareness Week, the APPG facilitates a parliamentary debate addressing issues such as bereavement care in hospitals, parental leave following the death of a child, and the staffing crisis in maternal healthcare.³⁹ The policy gains associated with these debates have been significant in meeting the needs of those who experience reproductive loss. For example, in March 2022, there was a 'Backbench Business debate' on the introduction of paid miscarriage leave.⁴⁰ The debate was introduced by Angela Crawley MP who also introduced a Private Member's Bill on the same topic,

35 GOV.UK, "Register a Birth" (accessed 8 August 2023), www.gov.uk/register-birth.

36 GOV.UK, "What to Do after Someone Dies" (accessed 8 August 2023), www.gov.uk/after-a-death.

37 GOV.UK, "Register a Stillbirth" (accessed 8 August 2023), www.gov.uk/register-stillbirth.

38 UK Parliament, "Register Of All-Party Parliamentary Groups as at 9 February 2022: Baby Loss," 9 February 2022, <https://publications.parliament.uk/pa/cm/cmllparty/220209/baby-loss.htm>.

39 Anastasia Lewis, Elizabeth Rough, and Tom Powell, "Baby Loss and Safe Staffing in Maternity Care," 12 December 2022, <https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0174>; Nikki Sutherland et al., "Baby Loss Awareness Week," 12 December 2022, <https://commonslibrary.parliament.uk/research-briefings/cdp-2021-0154>; UK Parliament, "Baby Loss: Covid-19," Hansard, 5 November 2020, <https://hansard.parliament.uk/commons/2020-11-05/debates/3E96A149-3A14-4D24-98B0-5DF83448BFA3/BabyLossCovid-19>.

40 UK Parliament, "Paid Miscarriage Leave"; Andy Powell and Fintan Codd, "Debate Pack: Introduction of Paid Miscarriage Leave," 16 March 2022, <https://researchbriefings.files.parliament.uk/documents/CDP-2022-0060/CDP-2022-0060.pdf>.

which had its first reading in July 2022, but was subsequently prorogued.⁴¹ This activity also illustrates that miscarriage, at a political and policy level, is increasingly discursively narrated through the lens of grief and bereavement.⁴²

In addition to debates on quality of care and employment leave, attention has also been given to whether there should be a formal process for registering and certifying pregnancy loss.⁴³ Several popular petitions have called for lowering the gestational threshold for registration of stillbirth, including one on the Change.org platform to ‘allow registered birth certificates for children born from 20 weeks’ that has over 350,000 supporters⁴⁴ and a government petition to ‘amend the Births and Deaths Registration Act 1953 to include all pregnancy loss’ that closed early due to the UK 2017 general election.⁴⁵ In addition, well-established third-sector organisations such as Tommy’s, the Miscarriage Association, and Sands have worked tirelessly to respond to the gaps in the support provided to those who experience miscarriage, including through the development of informal certificates of loss that can be provided to women during their clinical care. These organisations work closely with medical organisations to improve all aspects of care, including bereavement care in the clinical context. The impact of this work is evidenced in the Royal College of Obstetricians and Gynaecologists’ ‘Good Practice Guide: Registration of Stillbirths and Certification for Pregnancy Loss before 24 Weeks of Gestation’, which states:

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.⁴⁶

It is worth noting the fact that the title of this document distinguishes between the registration and certification processes. The guide goes on to provide a copy of Sands’ ‘generic certificate’ as a model that can be adapted to the local context. In parallel, there has also been considerable advocacy work taking place in the political sphere aimed at transforming approaches to registration and certification.

Since 2014, Tim Loughton MP has been at the forefront of calling for parliamentary reforms of stillbirth registration and the need to design a system of registration and certification that is more reflective of the experience of reproductive loss (both miscarriage and stillbirth). Loughton has been critical of the extent to which the law focuses on what

41 UK Parliament, “Miscarriage Leave Bill – Parliamentary Bills,” Hansard, 2 November 2023, <https://bills.parliament.uk/bills/3312>.

42 Danielle Fuller and Karolina Kuberska, “Outside the (Memory) Box: How Unpredictable Objects Disrupt the Discourse of Bereavement in Narratives of Pregnancy Loss,” *Mortality* 27, no. 1 (2022): 1–17, <https://doi.org/10.1080/13576275.2020.1783221>.

43 Cox, “Changing the Miscarriage Story”; Griffin, “Certifying Pregnancy Loss in Australia”; Sanger, “The Birth of Death”.

44 Henderson, “Allow Registered Birth Certificates for Children Born from 20 Weeks.”

45 Petitions – UK Government and Parliament, “Amend the Births and Deaths Registration Act 1953 to Include All Pregnancy Loss”, Petitions – UK Government and Parliament (accessed 12 December 2022), <https://petition.parliament.uk/archived/petitions/187027>.

46 Royal College of Obstetricians and Gynaecologists (RCOG), “Registration of Stillbirths and Certification for Pregnancy Loss before 24 Weeks of Gestation,” Good Practice No. 4, January 2005, www.rcog.org.uk/media/030jxnk5/goodpractice4registrationstillbirth2005.pdf.

he perceives to be arbitrary gestational limits rather than recognition of the birthing experience. His first attempt to reform the law in this area came in 2013/2014, with the introduction of a Private Member's Bill whose purpose was to allow for the registration of 'babies stillborn' prior to 24 weeks' gestation.⁴⁷ That Bill did not progress, but Loughton returned to the issue with his 'Civil Partnerships, Marriages and Deaths (Registration etc.) Bill', which sought to address what he perceived as the arbitrariness of the legislative cliff edge between stillbirth and miscarriage. He illustrated this with the following story:

One particularly stark example was a woman who had given birth to stillborn twins delayed [*sic*] either side of the 24-week threshold. One was registered as stillborn, recognised in the eyes of the state, while the other, born just before 24 weeks, did not exist. That cannot be right, and we can and must do better.⁴⁸

This argument frames pregnancy loss using criteria that are fundamentally different from the ones currently used in law (experience of birth rather than gestational age), highlighting a preference for foregrounding subjective experiences of losses over a more objective criterion such as gestational stage.

This Bill was a wide-ranging piece of legislation that contained proposals to amend the law in a range of areas, including the extension of civil partnerships to heterosexual couples. In the area of reproductive loss, the Bill contained amendments to extend the jurisdiction of the coroner to include stillbirth investigations and a proposal to lower the threshold for stillbirth registration. Clause 3(1) proposed that the law be amended to 'require or permit the registration of pregnancy losses which cannot be registered as stillbirths under the Births and Deaths Registration Act 1953'. In the Bill's second reading, Loughton explained this latter proposal as changing:

the definition of a stillborn child in the Births and Deaths Registration Act 1953 to include the formal recording of a child who is stillborn in the usual way but before the current threshold of 24 weeks' gestation.⁴⁹

Again, this discourse stretches the meaning of 'stillborn' to include miscarriages, shows a preference for individual subjective experience as a criterion for state recognition of pregnancy loss, and is driven (potentially understandably) by the desire to respond to the needs of bereaved parents at the expense of considering the wider consequences or coherence of the law. It also did not determine what it means to be 'stillborn in the usual way'.

It is clear from the form of words quoted here that Loughton saw registration as having a symbolic value and as an important process of state recognition. For Loughton, such recognition should attach to the subjective experience of 'giving birth' as the threshold for registration rather than, for example, the gestational age at physical separation or birth weight. This is similar to arguments developed by Carol Sanger in her critical appraisal of the evolution of law in this area. Sanger described how technological and cultural advances now mean that social birth, in Euro-American contexts, takes place

47 Fairbairn, "Registration of Stillbirth."

48 UK Parliament, "Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill," Hansard, 2 February 2018, [https://hansard.parliament.uk/commons/2018-02-02/debates/E9121077-9E81-44A8-BBD-D-AC8F4DDF0444/CivilPartnershipsMarriagesAndDeaths\(RegistrationEtc\)Bill](https://hansard.parliament.uk/commons/2018-02-02/debates/E9121077-9E81-44A8-BBD-D-AC8F4DDF0444/CivilPartnershipsMarriagesAndDeaths(RegistrationEtc)Bill).

49 UK Parliament, "Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill."

much earlier than biological birth.⁵⁰ The social life of the foetus is firmly embedded in cultural practices surrounding pregnancy and has led to increased personification of the foetus.⁵¹ Sanger noted that reforms to the law in this area are often perceived as compassionate responses to the needs of bereaved families; however, she cautioned about the unintended consequences of such reforms.⁵² It is undoubtedly the case that we must be mindful of the unintended consequences that Sanger highlights, but we should be equally cautious not to separate the needs of those accessing abortion care from those experiencing other sorts of reproductive loss. Often this binary relies on stereotypes of ‘wanted’ and ‘unwanted’ pregnancies, and ‘intended’ and ‘unintended’ pregnancy outcomes, that does not reflect the diversity and complexity of experience in this area.

Ultimately, the *Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019* (UK) was enacted but did not amend the law on stillbirth registration. Instead, section 3 of the Act contains a significantly watered-down proposal placing an obligation on the Secretary of State for Health and Social Care to:

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.

This obligation was met by the PLR (launched by then-Secretary of State for Health and Social Care Jeremy Hunt), whose goal was ‘to consider whether the law should be changed to allow registration of pregnancy losses that take place before gestation of 24 weeks’.⁵³ The PLR was chaired by Zoë Clark-Coates, who established the bereavement charity Saying Goodbye, and Samantha Collinge, a bereavement midwife. The PLR’s terms of reference were ‘to consider whether the law should be changed to allow registration of pregnancy losses that take place before gestation of 24 weeks’, and its membership included bereaved individuals, medical professionals, researchers working in the area, and people working in relevant support groups. The PLR’s report and subsequent government response were published in July 2023. Chapter 8 of the PLR’s report set out the review’s findings on certification of miscarriage, which led to Recommendation 61:

In recognition of a life lost, the government must ensure that an official certificate is available to anyone who requests one after experiencing any loss pre-24 weeks’ gestation. The certificate must:

- be backdate-able with no cut-off point so people with a historic loss may also access this long-requested recognition
- be available to anyone regardless of the type of loss they have experienced. Parents must have the option to be able to supply evidence of the loss, but this should not be mandatory

50 Sanger, “The Birth of Death”.

51 Janelle S. Taylor, “The Public Life of the Fetal Sonogram and the Work of the Sonographer,” *Journal of Diagnostic Medical Sonography* 18, no. 6 (2002): 367–79, <https://doi.org/10.1177/8756479302238392>.

52 Sanger, “The Birth of Death.”

53 GOV.UK, “Pregnancy Loss Review Group” (accessed 12 December 2023), www.gov.uk/government/groups/pregnancy-loss-review-group.

- contain wording that is adaptable (including an option to add a baby's name) as it is vital that parents are able to choose the language they prefer
- be available as a download or as a hard copy. The certificate needs to be accessible by all, not just by people with access to a computer
- be available to both parents

To ensure the certificates remain credible, the applicant should be required to provide identity verification.

The certificates will not be legal certificates, but will be official government-issued ones, and should look official, rather than just commemorative, as it is crucial to families that they have official recognition of their loss.

We will continue to partner with the government to design and deliver this as quickly as possible.⁵⁴

The recommendations on certification had been widely trailed in the preceding years and, as noted earlier, were formally endorsed in the Women's Health Strategy for England published in July 2022 (a year before the PLR's report). The strategy stated it would ensure that all those who go through the loss of a pregnancy before 24 weeks could, if they wish, be issued a certificate in recognition of their experience.⁵⁵ Certification was thus, unsurprisingly, one of the 'immediate actions' in the Government Response to the PLR, which announced that a new 'certificate of baby loss' service would be rolled out during Baby Loss Awareness Week (9–15 October) 2023.⁵⁶ Key features include (1) certificate issuance being voluntary; (2) medical verification not being required for certification, so as to be inclusive of historic losses; and (3) '[t]he certificate will provide official recognition of the pre-24-week pregnancy loss, but it will not be a legal document. The certificate will not provide evidence of the parents' identity, or entitlement to any statutory maternity or bereavement benefits.'⁵⁷ To better understand the tension inhering in miscarriage certification, we return to the symbolic and material values that certification is understood as having.

Challenges: Ambivalent parallels

Improvements in the provision of bereavement care following pregnancy loss have been shown to translate into less trauma and better ability to deal with the experience – for parents and healthcare staff.⁵⁸ Bereavement care following pregnancy loss includes options for making memories (e.g., hand- and foot-prints), creating opportunities and spaces for parents to see and spend time with the baby, and memento photography.⁵⁹

54 Clark-Coates and Collinge, "The Independent Pregnancy Loss Review."

55 DHSC, "Women's Health Strategy for England."

56 At the time of writing, December 2023, this still has not happened.

57 DHSC, "Government Response to the Independent Pregnancy Loss Review."

58 Bethany Atkins et al., "Stillbirth: Prevention and Supportive Bereavement Care," *BMJ Medicine* 2, no. 1 (2023), <https://doi.org/10.1136/bmjmed-2022-000262>.

59 Fuller and Kuberska, "Outside the (Memory) Box"; Abigail McNiven, "(Re)Collections: Engaging Feminist Geography with Embodied and Relational Experiences of Pregnancy Losses" (Doctoral Thesis, Durham University, 2014), <http://etheses.dur.ac.uk/10786>; Sands UK, *Pregnancy Loss and the Death of a Baby: Guidelines for Professionals, 4th Edition* (London, 2016).

Additional routine bereavement care also includes disposal of the remains of the pregnancy, often handled by the hospital in collaboration with a local funeral home or a crematorium, organised in a way that follows the preferences of the parents, often resembling services for people who lived and died.⁶⁰ Acknowledging the parallels in the effects that miscarriages and stillbirth have on individual persons has been key in shaping bereavement care pathways centred on the experiences of those who have lost a pregnancy. A closer focus on the phenomenon of certificates of miscarriage brings into sharp relief the ambivalences in how these documents acknowledge the loss while failing to occupy the legal bureaucratic space they attempt to mirror.

Pregnancy loss certificates in the UK

The use of certificates of miscarriage has been increasing in the UK in recent decades. Currently, the National Bereavement Care Pathway and the Miscarriage Association recommend that certificates should be offered to those experiencing miscarriage. As previously noted, a similar recommendation was made in the Royal College of Obstetricians and Gynaecologists' 'Good Practice Guide' as early as 2005.⁶¹ Variations of informal certificates are offered to parents by numerous hospital care teams to acknowledge the pre-24-week pregnancy loss.⁶² Some pregnancy loss charities in the UK have template certificates that they offer to hospitals.⁶³ The aim of this kind of certificate is to mark the loss and serve as a personal (rather than official) proof of their experience and their baby's existence. An analysis of National Health Services (NHS) trust documentation relevant to bereavement care following pregnancy loss from 2016 to 2017 has shown a variation in practice around offering certificates for miscarriage and the form these certificates take, especially in wording.⁶⁴ The lack of uniformity in the design and wording of miscarriage certificates highlights their informal character and also the fact that not all those who experience miscarriage will want a certificate or indeed to be offered such a certificate. Many miscarriage certificates in the UK use the official NHS trust-headed papers, but some feature images of flowers (especially snowdrops or forget-me-nots) and/or a decorative border, which distinguishes them from undecorated official documents. Such miscarriage certificate documents embody a striking paradox. On the one hand, their aesthetic designs are meant to manifest kindness and warmth in the recognition of pre-24-week pregnancy loss. On the other hand, this design further distinguishes the certificates of miscarriage from the starkness of official stillbirth certificates.

While the new 'official' certificates are to be welcomed, it is clear these certificates will be largely symbolic in nature. This perpetuates the gap between the expectations of what these documents can achieve and what the law affords. In a context such as England and

60 Kuberska, "Unwitnessed Ceremonies"; Middlemiss, "Pregnancy Remains, Infant Remains, or the Corpse of a Child?"

61 RCOG, "Registration of Stillbirths and Certification for Pregnancy Loss before 24 Weeks of Gestation."

62 Fuller et al., *Death before Birth*.

63 Miscarriage Association, "Certification" (accessed 9 December 2022), www.miscarriageassociation.org.uk/information/for-health-professionals/certification; Miscarriage Association, "Sample Certificates to Mark Pregnancy Loss before 24 Weeks of Pregnancy" (accessed 9 December 2022), www.miscarriageassociation.org.uk/wp-content/uploads/2016/09/Certificate-Examples-2017.pdf.

64 Fuller et al., *Death before Birth*.

Wales, miscarriage certificates are not mandatory and do not come with the statutory entitlements (e.g., parental leave, as is provided in the case of stillbirth). While ‘official’ miscarriage certificates may be a welcome step towards recognising pregnancy loss as a potentially important personal life event, ultimately, although they resemble documents issued for life events that require formal registration (such as births, stillbirths, and deaths), the miscarriage certificates do not refer to a central register (contrary to certificates for those other life events). Nor will the miscarriage certificates bring with them the more formal material responses indicative of other life events (e.g., leave from employment or welfare supports). Finally, it will be interesting to see how bereaved families respond to miscarriage certificates when they are abstracted from the bereavement support context – official miscarriage certificates will be applied for online or over the phone, and no details have been given on whether parents will be signposted to other sorts of support during this process.

The purpose of informal certificates of miscarriage

Recognition of the significance and effects that pregnancy loss can have on those who experience it is one of the major themes in the research on and advocacy around pregnancy loss and miscarriage in particular. At an immediate level, this recognition can manifest through empathetic care from healthcare practitioners or through interactions with other people that acknowledge the event in accordance with the views of the individual. At a higher level, recognition of pregnancy loss can be manifested via local policies and guidelines that offer all those experiencing pregnancy loss opportunities, if they want them, to say goodbye to the baby via memory making, funeral options, and/or paid compassionate leave. Finally, formal recognition would include an official record of the event, with the names of those involved and other details such as the time and place of the event. Certificates of events recorded in formal registers are a proof of a kind of life event that the state recognises.

Certificates of miscarriage may record a range of information that is somewhat similar to the information included on a stillbirth certificate. Currently, the information on informal certificates of miscarriage is often recorded by a healthcare professional, and certificates may also be signed and dated. What certificates of miscarriages aim to do is create additional parallels between pre-24-week pregnancy losses (which are not registered) and post-24-week pregnancy losses, or stillbirths, which require formal registration. So while miscarriage certificates do not carry the weight of the certificates issued for births and stillbirths, the introduction of government-issued miscarriage certificates can be seen to form part of a spectrum of (ambivalent) recognition. At one end of the spectrum is a miscarriage certificate with a purported aim to ‘provide comfort and help parents validate their loss’,⁶⁵ and at the other end are birth and death certificates where the focus of the recognition is not on parental experience but rather the formal attribution of state recognition to an entity. Nonetheless, calls abound for birth registration to also be more responsive to the needs of parents and pay due attention to the ways in which registration practices are important to family experience and identity.⁶⁶

65 DHSC, “Government Response to the Independent Pregnancy Loss Review.”

66 Liam Davis, “The Evolution of Birth Registration in England and Wales and Its Place in Contemporary Law and Society,” *The Modern Law Review* 87, no. 2 (2024): 317–42, <https://doi.org/10.1111/1468-2230.12836>.

Miscarriage certificates point to a theoretical status in the formal register of live births and stillbirths and to the entitlements that obtaining this status could grant them, from a formal recognition of their existence to material support received by those whose babies were stillborn or born alive.

The fundamental informality of miscarriage certificates – or their ability to only symbolise recognition to a limited audience rather than grant access to material support, such as paid leave – is obscured by their material form and the way they are produced: in good faith, respectfully, by a healthcare professional, another person (e.g., an individual in a third-sector organisation) or local artist. Pregnancy has been conceptualised as a forward-moving liminal state that pregnancy loss disrupts in fundamental ways, positioning the person in an inescapable variation of that liminality: no longer pregnant but not a parent.⁶⁷ The invisibility of this type of liminality resulting from a miscarriage, further reinforced by marginalisation of pregnancy loss in mainstream reproductive scripts, is what is challenged by work around pregnancy loss awareness and support.⁶⁸ Recognition relies on familiarity; in the absence of first-hand experiences, it must rely on empathy emerging from parallel experiences.

Regarding funerals for pre-24-week pregnancy losses in the UK, the most common routine arrangements resemble traditional funeral ceremonies – including music, orders of service, and even a person leading the ceremony.⁶⁹ Where they differ from ceremonies for people who lived and died is in the fact that the pregnancy remains are often put in a shared coffin, there is no registration of the pregnancy remains as individuals, and the ceremonies are often unattended. Importantly, those who organise and carry out these ceremonies – funerary industry professionals, bereavement midwives, and/or members of hospital chaplaincy teams – all emphasise the importance of making these events resemble funerals for people who lived and died, highlighting the parallels in experiences of bereavement with a view to offering a way of saying goodbye to a baby that can only be recognised in a limited way.

We observe similar parallels in the practices around certification. While death (of either a foetus or living person) causes an absence, those who stay alive summon materiality that can testify to the past existence of those who died and to reorder their social world.⁷⁰ Certificates of miscarriage may be tools for summoning materiality in that they resemble certificates that testify to the existence of those who are also recorded in formal registers. Ultimately, however, the power of miscarriage certificates is symbolic without consequent material support. Research suggests that these certificates matter a great deal to some people as an important symbol to recognise the existence of their child and their status as a parent. They also reveal the unequal status of pregnancy losses on either side

67 Linda L. Layne, *Motherhood Lost: A Feminist Account of Pregnancy Loss in America* (New York: Routledge, 2013); Alison Reiheld, “‘The Event That Was Nothing’: Miscarriage as a Liminal Event,” *Journal of Social Philosophy* 46, no. 1 (2015): 9–26, <https://doi.org/10.1111/josp.12084>.

68 See, e.g., Kuberska and Turner, “The Presence of Absence”; Olga Kuchinskaya and Lisa S. Parker, “‘Recurrent Losers Unite’: Online Forums, Evidence-Based Activism, and Pregnancy Loss,” *Social Science & Medicine* 216 (2018): 74–80, <https://doi.org/10.1016/j.socscimed.2018.09.014>; Erica van der Sijpt, “Navigating Reproductive Losses,” in *The Routledge Handbook of Anthropology and Reproduction*, ed. Sallie Han and Cecilia Tomori (London: Routledge, 2021).

69 Kuberska, “Unwitnessed Ceremonies.”

70 Jenny Hockey, Carol Komaromy, and Kate Woodthorpe, eds., *The Matter of Death: Space, Place and Materiality* (Basingstoke: Palgrave Macmillan, 2010).

of the 24-week pregnancy threshold. However, we must be careful that they do not also serve to homogenise the experience of loss prior to 24 weeks in ways that may be at odds with experiences within this group. In a sea of parallels found in bereavement care and practices, the lack of parallel stands out here.

Conclusion

In this chapter, we have critiqued recent attempts to extend ‘certification’ practices to miscarriage on several levels, specifically attempting to understand the significance of a process of certification disentangled from registration. While the original purpose of the English registration system primarily involved property rights, inheritance, and welfare protections, it evolved to include public health concerns, and this, in turn, prompted the formalisation of stillbirth registration. ‘Vital registrations’ became an important tool for monitoring the overall health of the nation, as these demographic indicators were used as a shorthand for quality of life.⁷¹ This framework for vital registrations remains in use to this day and, as such, it is important to acknowledge its origins in presenting a critical overview of current practices and the challenges of changing them. Registration and certification practices in the context of reproductive loss are further complicated by the way in which part of the origin story of stillbirth registration involved suspicion, as Davis summarised:

There was a more significant concern that some stillbirths were in fact cases of infanticide, and the ‘stillbirth’ label merely a convenient classification to avoid suspicion. Through the late nineteenth and early twentieth centuries, there was widespread social concern over the issue of infanticide.⁷²

These factors go some way to explaining why formal processes are often mismatched with parental expectations.

The landscape of recognition, guidelines, and available support for those experiencing miscarriage is changing in England. Despite managing to generate some interest and favourable responses from members of the government, no changes to law have been made. This is reflective of the finding that while most parents welcome having a choice to register a miscarriage, they do not think it should be mandated.⁷³ Importantly, the Women’s Health Strategy for England did not commit to creating a formal record of miscarriage, only recommending that certificates of miscarriage be provided to those who request them.⁷⁴ This gives rise to a paradoxical situation in which the only pre-24-week pregnancy endings formally recorded by the state are those resulting from the termination of a pregnancy in accordance with the *Abortion Act 1967* (UK).

Moving away from the formal processes to a consideration of extending certification practices, we wished to highlight that there is a danger in the extent to which this symbolic move of providing miscarriage certificates may come at the cost of more tangible material support that bereaved people need or improving scientific and medical understandings in this area. Cynically, it may be viewed as an easy win in a policy context. A

71 Higgs, *Life, Death and Statistics*.

72 Davis, “Stillbirth Registration and Perceptions of Infant Death, 1900–60,” 632.

73 Clark-Coates and Collinge, “The Independent Pregnancy Loss Review”; Sands UK, “Sands’ Poll Results Summary in Response to Pregnancy Loss Review.”

74 DHSC, “Women’s Health Strategy for England.”

full appreciation of the procedural idiosyncrasies of the registration system is only sensible when we consider the origins of the framework. Changing who or what is recorded in the civil registration system is not simply a matter of being able to produce more nuanced statistics; it is a matter of who or what deserves special space in this record of a nation. It is in this context that we critique the efforts towards enabling registration and certification of miscarriages in England.

The power of bureaucracies lies not in their effectiveness but in the fact that they can be benevolent or violent.⁷⁵ In the case of pregnancy loss in the UK, the gestational age of the dead pregnancy determines its recognition by the state as an existence worth recording, issuing a certificate for, and supporting through statutory entitlements. Old enough and the baby becomes registered as stillborn; otherwise, parents must hitherto rely on their baby being recognised by those willing to do the emotional labour of acknowledging the loss. By amplifying parallels with officially recognised pregnancy losses, certificates of miscarriage may be argued to attempt to cut across this divide by highlighting the criterion of meaning of the pregnancy to those who lost it. In that process, a space is being carved out for a new kind of dead: those currently invisible to the state.

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75 David Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy* (New York: Melville House, 2015).

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