

# Chapter B3: Evidence of age and death

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# Chapter B3: Evidence of age and death

## Introduction

### General

B3001 This chapter is about decision making on claims for

1. UC
2. PIP
3. new style JSA (hereafter referred to as JSA)
4. new style ESA (hereafter referred to as ESA).

**Note:** ADM Chapter M1 contains guidance on the meaning of new style JSA and new style ESA.

B3002 To satisfy the conditions for

1. UC **or**
2. PIP **or**
3. ESA **or**
4. JSA

proof of age of the claimant may be required. For example, entitlement to UC depends on the claimant not having reached the qualifying age for SPC<sup>1</sup>.

**Note:** See ADM Chapter E1 guidance on the qualifying age for SPC.

*1 WR Act 12, s 4(1)(b)*

B3003 The question of age or death also arises in other limited circumstances. For example, a claimant in receipt of JSA has to provide evidence of age when nearing age 25 so that the correct age-related amount can be considered<sup>1</sup>.

*1 JSA Regs 13, reg 49*

B3004 The onus of providing satisfactory proof of age or death is on the claimant or their representative<sup>1</sup>. However, claimants or their representatives should be helped as much as possible by

1. advising them about the kind of evidence that may be needed **and**
2. advising how to obtain that evidence **and**
3. undertaking searches to verify the events or dates in question.

*1 UC, PIP, JSA & ESA (C&P) Regs, reg 37(1) & reg 38(2); JSA Regs 13, reg 31(1) & (2)*

B3005 Where there is any doubt about the evidence, questions about age or death are put to the DM. The DM should decide whether or not there is enough evidence to determine the question.

B3006 – B3010

## Questions where no claim exists

B3011 A DM can only give a decision about a person's age or death as part of an outcome decision on a claim, revision or supersession. The DM should not give a decision on such a question raised by a person if

1. the question is not raised as part of a claim for benefit or an application for revision or supersession **or**
2. a decision on the claim for benefit or application for revision or supersession can be given without deciding the question.

**Note:** See ADM Chapter A2 for guidance on claims, ADM Chapter A3 for guidance on revision and ADM Chapter A4 for guidance on supersession.

B3012 A refusal to give a decision on an age or death question under B3011 will not be an outcome decision and will not carry a right of appeal.

**Note:** See ADM Chapter A1 for guidance on outcome decisions.

B3013 – B3015

## Types of evidence

### Primary evidence

B3016 The best evidence of age or death that can be provided is a certified copy of an entry which has by law to be made in a register concerning the event. The certificates are issued by

1. the Registrar General **or**
2. a Superintendent Registrar **or**
3. a Registrar of Births and Deaths **or**
4. in Scotland, the Registrar General for Scotland or a District Registrar.

**Note:** See B3022 for guidance on secondary evidence if primary evidence is not available.

B3017 If there are no material differences in the information available, the DM may accept

1. an extract from an entry in a statutory register **or**
2. a verified entry on Departmental records **or**
3. an extract from the record of the Registrar General.

B3018 If there is a material difference the DM should ask for the claimant's observations before making a decision. Discrepancies in the dates of events will need special attention. In particular, inconsistencies between the age given when making a claim

and on a certificate, or as shown by any other available evidence, may cause doubt as to identity.

B3019 The DM should consider all the evidence to determine whether, in spite of any discrepancies, the other details agree enough to exclude the possibility that the certificate refers to someone other than the claimant.

B3020 The DM must consider the possibility that information on a statutory certificate may be wrong if there is strong evidence to suggest this<sup>1</sup>.

*1 R(S) 15/52*

B3021 The DM should accept a certificate issued abroad as the equivalent of a certificate in B3016. If

1. a claimant was born or died abroad **and**
2. the certificate produced was issued by the appropriate registration authority abroad

the certificate should be accepted unless there is reason to doubt its validity.

**Note:** Photocopies of original documents are not primary evidence (see B3023).

## **Secondary evidence**

B3022 If primary evidence is not available, the DM can ask for any secondary evidence. Unsupported secondary evidence carries less weight than primary evidence. The DM should ensure that as much information as possible has been obtained, before considering the relative value of each piece of evidence.

**Note:** See operational guidance for more details.

## **Photocopied documents**

B3023 Photocopies of original documents carry little or no weight. However, photocopies that are certified as a true copy of the original by a person of good standing carry more weight. A person of good standing is a

1. civil servant **or**
2. member of the UK foreign service including Her Majesty's overseas civil service, British Diplomatic Service, and consular official **or**
3. doctor or surgeon registered under the law of the country where the declaration is made **or**
4. minister of religion **or**
5. barrister, solicitor or advocate authorized to practise in the country where the declaration is made **or**
6. notary public or any person allowed to administer oaths in the country where the declaration is made **or**

7. an officer of a bank authorized to sign documents on the claimant's behalf **or**
8. magistrate **or**
9. chartered accountant.

B3024 – B3030

## Evidence of age

### Birth certificates

B3031 Births must be registered

1. in England and Wales - within 42 days of the date of the birth<sup>1</sup> **and**
2. in Scotland - within 21 days<sup>2</sup>.

*1 Births & Deaths Registration Act 1953, s 2;*

*2 Registration of Births, Deaths & Marriages (Scotland) Act 1965, s 14*

B3032 A birth certificate is a certified copy of the entry in the Register of Births. A full birth certificate shows the

1. date and place of birth **and**
2. sex of the child **and**
3. forenames of the child **and**
4. parents' names, addresses and occupations.

As well as being satisfactory evidence of the date of birth, a full birth certificate contains evidence of parentage. These details should be presumed correct unless there is strong evidence to the contrary.

B3033 There are two other types of birth certificates issued by a Statutory Authority. These are a

1. short form of birth certificate **and**
2. certificate of registration of birth.

### Short form of birth certificate

B3034 A short form of birth certificate shows the

1. date and place of birth **and**
2. forenames and surname of the child **and**
3. sex of the child **and**
4. registration district and sub-district.

It is accepted by the Secretary of State as satisfactory evidence of age unless identity is in doubt, when supporting evidence is required. This certificate does not contain evidence of parentage. The information given on it enables the full entry in

the register to be traced through General Register Office and the recorded parents' names to be obtained.

### **Certificate of registration of birth**

B3035 A certificate of registration of birth is not a birth certificate but merely certifies that a birth has been registered and contains the

1. registration district and sub-district **and**
2. date of signature **and**
3. name of the informant **and**
4. sex of the child that has been born (or still born) **and**
5. name of the child - but not in all cases **and**
6. date of birth.

Unless this certificate gives both the surname and forenames of the child, the Secretary of State will not accept it as satisfactory evidence and the case is passed to the DM for a formal decision. The certificate is useful for tracing the record of births through General Register Office and may support other and more definite evidence.

### **Certificate of baptism**

B3036 A certificate of baptism is not primary evidence of a date of birth (see B3016). It should be referred to the DM with any other available evidence.

#### **Protestant baptismal certificate**

B3037 A date of birth given by the claimant or suggested by other evidence may be accepted if

1. it is earlier than the date of baptism (but not by more than one month) **and**
2. there is no conflicting evidence.

If no date of birth is given or suggested, a date one month before the date of baptism should be accepted.

**Note:** See B3043 where baptism is not within the normal periods.

B3038 – B3040

#### **Roman Catholic baptismal certificate**

B3041 If the baptism took place in the Republic of Ireland or Northern Ireland the date of birth given by the claimant or suggested by other evidence may be accepted if it is

1. the same as the date of baptism **or**
2. the day before the baptism.

In any other case the date of baptism should be accepted as the date of birth.

B3042 If the baptism took place in GB it will usually have been one to three weeks after the birth. The date of birth may be accepted as

1. the date given by the claimant or suggested by other evidence - if it is in the three weeks before the baptism **or**
2. if no date is given or suggested - a date one week before the date of baptism.

### **Baptism not within normal periods**

B3043 Baptism does not always take place within the periods in B3037 – B3042. If other evidence suggests an earlier date of birth, all the evidence must be considered before deciding the date of birth.

### **Material discrepancies in birth or baptismal certificate**

B3044 If a birth or baptismal certificate shows a different name from the one by which the claimant has been known (for example due to adoption at an early age and the use of a name given by the adoptive parents) the DM should obtain evidence linking the two names. If the claimant is unable to produce this evidence the certificate can only be accepted as secondary evidence. The DM should consider it with any other available evidence before accepting that it refers to the claimant.

### **Adoption certificates**

B3045 Every adoption order has to be entered in an Adopted Children Register. The entry should be regarded as if it was a certified copy of an entry in the Register of Births<sup>1</sup>.

*1 Adoption Act 1976, s 50; Adoption (Scotland) Act 1978 s 45*

B3046 The DM should accept an adoption certificate showing the date of birth as evidence of birth.

B3047 – B3050

### **Secondary evidence of age**

B3051 Where the DM does not accept the evidence of age, all the available evidence should be considered. A convenient way for the DM to assess the merits of the evidence is to list against each item the date of birth deduced from that item. The DM may then establish the date of birth by considering the items on the list overall. Documents such as birth certificates carry most weight unless their validity is in doubt.

**Note:** See operational guidance for more details.

#### **Example**

Cain makes a claim for UC on 10.12.13. He states he was born on 8.8.53. He has no birth certificate and registration of his birth cannot be traced. He contends that he



is two years younger than his sister who, he states, was born on 9.8.51. She also has no birth certificate, and the registration of her birth cannot be traced.

The following evidence has been found and presented to the DM:

<b>Nature of evidence</b>	<b>Date of birth deduced</b>
Census return dated April 1961 gave Cain's age as 8 and his sister's age as 10;	8.8.52
Cain's sister's marriage certificate dated January 1971 gave her age as 20	8.8.52
Cain's discharge certificate from the Royal Marines gave his date of birth as 8.8.53, based on age given on enlistment.	8.8.53

The DM determines that Cain was born on 8.8.52. The DM also decides Cain is not entitled to UC as he has reached the qualifying age for SPC.

B3052 Examples of secondary evidence of age include

1. child's certificate of vaccination or health record card
2. entry in Family Bible or other book containing an old entry of date of birth-for example a Birthday book
3. school reports, register or prize
4. confirmation certificate
5. indentures of apprenticeship
6. insurance policy taken out before middle life (see B3053)
7. certificate of service in the Forces or any other employment under the Crown or in the Mercantile Marine
8. Approved Society or Ministry of Labour and National Service records
9. certificate of naturalisation (see B3054)
10. deduction from the proved ages of brothers and sisters
11. statements from employers or acquaintances who have reason to know the claimant's age: For example, a school friend
12. National Health Service medical card
13. passport
14. baptismal certificate.

**Note:** Unsupported secondary evidence carries less weight than primary evidence (see B3022).

### **Insurance policies**

B3053 The value of any statement of age in an insurance policy may vary according to the age admitted at the time the policy began. The DM should bear in mind that an older person may have understated their age. If the policy is endorsed “Age admitted”, it can be accepted as reasonably good evidence.

### **Certificate of naturalisation**

B3054 The date of birth or statement of age in a certificate of naturalisation may be based solely on the claimant’s personal and unsupported statement at the time the document was prepared.

### **Evidence indicates year of birth only**

B3055 Sometimes the available evidence may establish the year of birth, but not the day or month. Where

1. a claim for benefit is made **and**
2. entitlement depends upon the claimant reaching a certain age or the rate of benefit payable varies according to the claimant’s age

the onus of proving that the age condition is satisfied rests with the claimant. No presumptions can be made in the claimant’s favour.

#### **Example**

Debbie claims ESA on 4.2.14. She can prove only that she was born in 1989. For any day in 2014 falling before 31.12.14 the rate of ESA payable in the assessment phase is that for a claimant aged less than 25.

B3056 Once the DM has determined a date of birth using these principles, they should apply that date to all subsequent claims for any benefit. If the age question arises on another occasion, the DM

1. should consider the question on the evidence then available (see B3005) **and**
2. may be able to reconsider the earlier decision if the claimant has provided additional information.

B3057 A claimant must prove that the age condition for entitlement is satisfied for each claim made. The DM need not determine what the claimant’s date of birth might be but should decide that

1. the claimant has not established that the relevant age has been reached **and**
2. benefit is therefore not payable or payable at a lower rate.

B3058 The decision should show only the year of birth where

1. a question of a person's age is being decided in advance of a claim **and**
2. it is not possible to decide on what day in a year the person was born.

### **No documentary evidence available**

B3059 If a claimant cannot produce any documentary evidence to support a date of birth the DM has to decide what the date of birth is on the balance of probability.

B3060 A claimant's own statement is evidence and, like any other evidence, it has to be weighed carefully. Confirmation of a claimant's own evidence is not always necessary<sup>1</sup>. However, a person cannot give first hand evidence about the date of birth and the DM must therefore consider any further evidence supplied by, for example, any living relatives. The DM should accept the claimant's statement unless there is

1. reason to doubt the claimant's statement **or**
2. other contradictory evidence.

If the DM can access important evidence that is not available to the claimant, the DM should obtain that evidence<sup>2</sup>.

*1 R(I) 2/51; R(SB) 33/85; 2 Department for Social Development v Kerr [2004] UKHL 23*

### **Point in time at which a person reaches a particular age**

B3061 A person is treated as having reached a particular age in years on the midnight immediately before the anniversary<sup>1</sup>. In Scotland, where a person is born on 29 February, the anniversary in any year other than a leap year is 1 March<sup>2</sup>.

*1 FLR Act 69, s 9(1); Age of Legal Capacity (Scotland) Act 1991, s 6(1); 2 s 6(2)*

#### **Example**

Jean is born on 5.5.89. She reaches age 25 at midnight between 4.5.14 and 5.5.14.

B3062 – B3070

### **People born abroad**

**[See Memo ADM 04/19]**

B3071 People born abroad can often produce a birth certificate which can be accepted as satisfactory evidence of age. In other cases secondary evidence (see B3052) is obtained and considered in the usual manner.

**Note:** See operational guidance for more details.

### **Claims from immigrants**

B3072 It may be difficult to verify the age of claimants or their dependants where the birth took place

1. outside the UK **and**
2. in a part of the world where births were not officially registered.

**Note:** In certain parts of the world, a person's age is far less materially important than it would be in the United Kingdom, and claimants in or from such countries may have little idea how old they really are

B3073 The DM has to determine the date of birth on a balance of probability taking into account all the evidence, explanations and circumstances<sup>1</sup>. When doing so the DM should note that

1. an opinion about the claimant's age, based on a physical examination and given by a doctor in this country, is generally good evidence (see B3074)
2. documentary evidence such as sworn affidavits and witness statements, intended to disprove an earlier statement in favour of a later one, are not necessarily sufficiently convincing to disprove the earlier statement.

*1 R(P) 1/75*

B3074 Where B3073 1. applies the weight to be given to this evidence varies according to

1. the nature of the physical examination **and**
2. how far the accepted signs of age are explored **and**
3. the degree of certainty expressed by the opinion (see B3086 et seq).

**Note:** See B3090 for guidance on findings from X-rays when considering 1..

B3075 Where a person makes a claim for benefit, for example UC, which shows a date of birth different from that previously recorded but which is not shown to be verified, DMs should note that

1. a copy of the record sheet should be obtained from HMRC records
2. unless there is reason for doubt they should accept the date of birth on the copy record sheet from HMRC records where the entry is marked as verified
3. where the recorded date of birth is not shown as verified claimants should be asked to confirm in writing
  - 3.1 that they gave that date of birth when registering for NI purposes **and**
  - 3.2 why they did so
4. they should normally accept the date of birth given on registration unless the claimant
  - 4.1 denies giving that date on registration **or**
  - 4.2 now alleges that it is not correct (see B3076).

B3076 Where B3075 4. applies claimants should be asked to state in writing why they

1. did not give that date when registering for NI **or**
2. otherwise dispute the accuracy of that date.

B3077 Where a claimant produces

1. a passport showing an altered date of birth **or**
2. two passports, the current one showing the claimed date of birth

the DM should establish the reason for the change before deciding which of the dates is to be accepted.

### **Claimant from Pakistan or Azad Kashmir**

B3078 Claimants in or from Pakistan or Azad Kashmir may produce a form of birth certificate which

1. includes details such as the father's religion **and** caste **and** the name of the attendant midwife **and**
2. certifies that it is based on old records kept by the village watchman or the police.

However birth registration in Pakistan was not compulsory until 1961<sup>1</sup>. No conclusive proof is held of the existence of official birth records in Pakistan before 1961 and at the same time as the birth.

*1 Basic Democracies Order 1959; Muslim Family Laws Ordinance 1961*

B3079 The territory of Azad Kashmir (Free Kashmir) is self-administering but has adopted much of Pakistan's legislation. But the territory is unable to ensure strict compliance with the legislation and documentary evidence of date of birth (including alleged certificates of birth) originating from there cannot generally be relied on. This applies even where

1. it bears authoritative stamps **and**
2. the signatures of persons of official status.

The DM should examine such documents critically.

B3080 The guidance at B3078 – B3079 is based upon a statement obtained by the then Head of Contributions Branch when he visited Pakistan and Azad Kashmir (Appendix 1 and 2 to this Chapter).

B3081 – B3085

### **Medical advice on age of claimant where other evidence is unsatisfactory**

B3086 The DM should consider obtaining medical advice if

1. a claimant alleges a date of birth several years earlier than that recorded at HMRC **and**
2. action as in B3072 et seq does not resolve the issue.

B3087 Where B3086 applies the papers should be passed to Medical Services to arrange for the claimant to be physically examined. A medical opinion should be obtained as to whether the results of the examination support

1. the claimant's contention to have reached the age alleged **or**
2. the range of years within which those results show that the claimant's age probably lies.

**Note:** The medical examination should enable a reasonably reliable assessment of age up to about five years either way.

B3088 The papers should include

1. two identical recent photographs of the claimant (as a safeguard against impersonation) **and**
2. where the claimant has provided a passport, two copies of the
  - 2.1 page containing the identity details and photograph (so as to provide something against which the recent photographs can be compared) **and**
  - 2.2 first page (as later proof that the document copied was in fact a passport) **and**
3. a summary of the claimant's environmental history, countries in which the claimant has lived, and for how long.

B3089 If the examining medical practitioner's report confirms the claimant's alleged date of birth, the DM should accept the date of birth shown on the claim form. If the report does not confirm the alleged date of birth, the DM should disallow the claim on the ground that the claimant has not established that the necessary age has been reached for claiming benefit. The DM does not need to determine the claimant's date of birth.

B3090 If a claimant appeals against a DM's decision based on medical advice obtained as in B3087 – B3088, the DM's submission to the FtT should include the following

"It is generally agreed that there is no medical test or group of medical tests which will enable the age of an adult to be accurately determined, particularly in the higher age groups. It is doubtful whether X-ray appearances alone can enable the age of an individual in middle or old age to be determined within an age range of less than 20 years. There are, however, certain clinical features which when observed and considered by an experienced medical practitioner may enable him to say whether on balance of probability the results of medical examination support an individual's contention that he has reached a stated age or, alternatively, to say within what age group of about 10 years he probably belongs."

B3091 – B3100

# Gender Recognition

## Introduction

B3101 Legislation<sup>1</sup> provides a legal framework that gives transsexual people with legal recognition in their acquired gender. The legislation took effect on 4.4.05.

*1 GR Act 04*

## Gender Recognition Certificate

B3102 A person aged 18 or over may make an application for a GRC on the basis of

1. living in the other gender<sup>1</sup> **or**
2. having changed gender under the law of a country or territory outside the UK<sup>2</sup>.

Applications are determined by a GRP<sup>3</sup>.

*1 GR Act 04 s 1(1)(a); 2 s 1(1)(b); 3 s 1(3)*

B3103 – B3105

## The application process

B3106 There are three ways of obtaining a GRC, these are described below. In all cases an application must include a statutory declaration as to whether or not the applicant is married<sup>1</sup>.

*1 GR Act 04, s 3(6)(a)*

## Fast track applications

B3107 If an application on the grounds given in B3102 **1.** is made during the two years beginning with 4.4.05, it can be granted if<sup>1</sup> the GRP is satisfied that the applicant

1. has or has had gender dysphoria, or (in the case of an application made after 3.10.05 has undergone surgical treatment for the purpose of modifying sexual characteristics<sup>2</sup>) **and**
2. has, if the application is made
  - 2.1 before 4.10.05 **or**
  - 2.2 after 3.10.05 and the applicant has undergone surgical treatment for the purpose of modifying sexual characteristicslived in the acquired gender throughout the period of **six** years ending with the date on which the application is made<sup>3</sup> **and**
3. intends to continue to live in the acquired gender until death **and**

4. has provided certain required evidence.

**Note:** For the purpose of 2. a statutory declaration that this has happened is required.

*1 GR Act 04, s 27; 2 s 27(2); 3 s 27(3)*

### The evidence requirements

B3108 An application under B3107 made within the six months beginning on 4.4.05 must include<sup>1</sup> a report made by

1. a registered medical practitioner **or**
2. a chartered psychologist practising in the field of gender recognition.

*1 GR Act 04 s 27(5) & s 3(1)*

B3109 An application under B3107 based on the applicant having (or having had) gender dysphoria must include<sup>1</sup> a report made by

1. a medical practitioner practising in the field of gender dysphoria **or**
2. a chartered psychologist practising in the field of gender dysphoria which include details of the diagnosis of the applicant's gender dysphoria.

*1 GR Act 04, s 27(5) & s 3(2)*

B3110 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
2. treatment for the purpose of modifying sexual characteristics has been prescribed or is planned

the reports referred to in B3109 must include<sup>1</sup> details of that treatment.

*1 GR Act 04, s 27(5) & s 3(3)*

B3111 – B3115

### Overseas recognition

B3116 **[See Memo ADM 04/19]** A person may also apply on the basis of having changed gender under the law of a country or territory outside the UK<sup>1</sup>.

*1 GR Act 04, s 1(1)(b)*

B3117 With this type of application, the GRP must grant the application if it is satisfied that<sup>1</sup>

1. the country or territory under the law of which the applicant has changed gender is an approved country or territory **and**
2. certain evidence requirements are met<sup>1</sup> (see B3119).

*1 GR Act 04, s 1(2); s 3(5)*

B3118 An "approved country or territory" means one prescribed as such by an order made by the Secretary of State<sup>1</sup>. A list of approved countries/territories is given at Appendix 3 to this Chapter.





## The evidence requirements

B3119 An application under B3102 **2.** must include<sup>1</sup> evidence that the applicant has changed gender under the law of an approved country.

*1 GR Act 04 s 3(5)*

B3120 – B3125

## Standard applications

B3126 The GRP did not consider standard applications until 4.10.05. A standard application may be made if the GRP is satisfied that the applicant<sup>1</sup>

1. has or has had gender dysphoria **and**
2. has lived in the acquired gender throughout the period of **two** years ending with the date on which the application is made **and**
3. intends to continue to live in the acquired gender until death **and**
4. complies with certain evidence requirements.

*1 GR Act 04, s 2(1)*

B3127 A standard application must include<sup>1</sup>

1. a report made by
  - 1.1 a registered medical practitioner practising in the field of gender dysphoria **and**
  - 1.2 another registered medical practitioner (who may, but need not, practise in that field) **or**
2. a report made by
  - 2.1 a chartered psychologist practising in the field of gender dysphoria **and**
  - 2.2 a registered medical practitioner (who may, but need not, practise in that field).

*1 GR Act 04, s 3(1)*

B3128 The reports made by a registered medical practitioner or a chartered psychologist must include<sup>1</sup> details of the diagnosis of the applicant's gender dysphoria.

*1 GR Act 04, s 3(2)*

B3129 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
  2. treatment for that purpose has been prescribed or planned for the applicant
- at least one of the reports required under B3127 **1.** or **2.** must include<sup>1</sup> details of that treatment.

*1 GR Act 04, s 3(3)*

## Foreign gender change

B3130 Unless B3132 applies, the general rule<sup>1</sup> is that a person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the UK.

*1 GR Act 04, s 21(1)*

B3131 Accordingly a person is not to be regarded as married by reason of having entered into a marriage following recognition of a gender change under the law of a country outside the UK<sup>1</sup>.

*1 GR Act 04, s 21(2)*

B3132 However a national of another country within the EU or EEA who

1. has been granted legal recognition of their gender change under the law of that country **and**
2. has an enforceable right under EC law to recognition of their acquired gender in the UK

will not need to make an application under B3116<sup>1</sup>.

*1 GR Act 04, s 21(6)*

B3133 – B3135

## Interim gender recognition certificate

B3136 Where the applicant is married or a civil partner, provided the other conditions are satisfied, the GRP will issue an interim GRC<sup>1</sup>.

*1 GR Act 04, s 4(3)*

B3137 A court which

1. makes
    - 1.1 absolute a decree of nullity granted on the ground that an interim GRC has been issued to a party to the marriage **or**
    - 1.2 final a nullity order made on the ground that an interim GRC has been issued to a civil partner **or**
  2. grants in Scotland, a decree of
    - 2.1 divorce in respect of a marriage **or**
    - 2.2 dissolution in respect of a civil partnership
- on the ground that an interim GRC has been issued

must, on doing so, issue a full GRC<sup>1</sup>.

*1 GR Act 04, s 5(1) & 5A(1)*

## Consequences of issue of certificate

B3138 Where a full GRC is issued to a person, that person's gender becomes for all purposes the acquired gender<sup>1</sup>.

*1 GR Act 04, s 9(1)*

## Parentage

B3139 The fact that a person's gender has become the acquired gender does not affect the status of the person as the father or the mother of a child<sup>1</sup>.

*1 GR Act 04, s 12*

B3140 – B3150

## Evidence of death

### Proof of death

B3151 **[See Memo ADM 04/19]** Death is usually proved by registration of the event. But if the alleged death has occurred abroad and a certified extract from the Registrar of Deaths is unobtainable, other evidence can be accepted if it is enough to prove

1. the date of the event **and**
2. the identity of the deceased.

**Note:** Notifications may be received on-line from the General Register Office and Tell Us Once.

B3152 Where death is proved by

1. a statutory certificate **or**
2. reference to the Registrar General **or**
3. a notification issued by the
  - 3.1 Navy, Army or Air Department of the Ministry of Defence **or**
  - 3.2 Registrar General of Shipping and Seamen

it should normally be accepted provided that there is no dispute as to the identity of the deceased.

**Note:** In a case where the date of death is not established and the documentary evidence shows both the date when the deceased was last seen and the date when the body was found the DM should make every effort to establish a likely date of death. See operational guidance for more details.

## Inquest held

B3153 In **England and Wales**, when a body is found the Coroner is always informed. The subsequent inquest may establish that death occurred some date before discovery

of the body. If there has been an inquest the DM should consider obtaining a copy of the Coroner's findings. Other evidence may be a certificate from a doctor who examined the body certifying that from its condition death must have occurred at an earlier specified date.

- B3154 In **Scotland** fatal accident inquiries are the responsibility of the Procurator Fiscal for the district with which the circumstances of death appear to be most closely connected. The DM should address inquiries to the Procurator Fiscal, or if an inquiry has been held, to the Sheriff Clerk of the Sheriff Court where the Inquiry took place.

### **Delay in issue of a statutory certificate**

- B3155 If there has been a delay in the issue of a statutory certificate, for example if inquest proceedings are adjourned, but there is clear evidence of death such as press notices, police statements, etc, and no doubt as to identity, the Secretary of State may accept such evidence.

### **Coroner's verdict**

- B3156 A Coroner's finding of a date of death is not binding on the statutory authorities. The DM
1. should accept the Coroner's finding if there is no contradictory evidence
  2. may accept a different date of death where the evidence clearly indicates that the finding is incorrect.

B3157 – B3160

### **Presumption of death by a Court of Law**

- B3161 In **England and Wales** where a Court of Law has presumed death, the DM should normally accept this as sufficient for death to be presumed for SS purposes. If the DM holds evidence which was not before the court throwing doubt on the presumption the DM should examine the papers critically before reaching a decision different from that of the court.
- B3162 The DM should note that
1. under English probate law, leave may be given to swear the death (on the basis that death is presumed) for probate purposes (see B3163)
  2. a decree of presumption of death may also be granted by the divorce division of the High Court<sup>1</sup>.

*1 Mat Causes Act 73, s 19*

- B3163 For the purpose of B3162 1. the granting of probate does not necessarily involve any finding of fact on the court's part, but leave to swear death is not given lightly. Probate granted under these circumstances is not necessarily accepted as evidence

of death. However, in most cases where evidence is sufficient to obtain a grant of probate this should be enough for the DM to accept that death may be presumed.

B3164 In **Scotland** a decree of presumption of death is conclusive for all purposes<sup>1</sup>, and is binding on the DM. If further information comes to light which throws doubt on the presumption the Department may make an application to the court for a variation of the decree<sup>2</sup>.

**Note:** Any payment of benefit made from the date of death to the date of the order of variation is treated as properly paid and as a result no overpayment will have occurred. The effect of a decree of presumption of death is considered at some length in case law<sup>3</sup>.

*1 Presumption of Death (Scotland) Act 1977; 2 s 4(3); 3 R(G) 1/80*

### **Presumption of death on available evidence**

B3165 Where death cannot be accepted under B3151 – B3164 the DM should weigh the evidence to decide where the balance of probability lies<sup>1</sup>. The DM should consider

1. the circumstances of the person's disappearance (e.g. exceptionally severe weather conditions, shipping disaster etc)
2. their age and occupation
3. their mode of living
4. their state of health at the date of disappearance
5. whether they had any motive for disappearing, for example financial embarrassment, threat of court proceedings, desertion from forces, or reason for concealing whereabouts from spouse (for example a maintenance order)
6. the period that has elapsed since they were last seen or heard of
7. what steps have been taken to trace them
8. whether any person who would be expected to hear from them or of them if they were alive has in fact heard from them or of them since they left home; if so, where and whether there was any clue to their disappearance in their last letter, etc.

The DM, if satisfied that the fact of death can be accepted, will need to establish the date of death.

*1 R(G) 4/57*

B3166 Where the circumstances of the disappearance

1. point to a particular day, that day should be presumed to be the date of death, for example where the person had fallen overboard from a ship at sea
2. do not point to a particular date of death but point to a period within which death, probably occurred, the DM should presume the latest date in that period to be the date of death.

## Presumption of death after seven years

### England and Wales

B3171 Where there is insufficient evidence for death to be presumed under B3165 – B3166, the DM may presume death if satisfied that a person has not been seen or heard of for seven years by the people who would be expected to have seen or heard of that person. The seven year rule is a method of establishing that a person is dead not<sup>1</sup> the date of a person's death.

**Note:** The relevant case law was made when a ten year rule applied.

*1 CG 73/50(KL)*

B3172 After establishing as in B3171 that the person concerned is dead, the DM should determine the date of death. The DM should decide the question whether a person is dead at a given time on all the evidence available. In particular the DM should consider whether because of

1. the circumstances in which the person was last seen **and**
2. the enquiries made at the time

it is more likely than not that the death occurred at a date earlier than the expiration of seven years, for example the date of disappearance.

### Scotland

B3173 Where death cannot be accepted under B3151 – B3164 the DM may, in the absence of a decree of court, determine whether a person has died and the date of death<sup>1</sup>. This applies if the date of presumption of death which the interested party seeks to show is on or after 1.3.78 and only if the

1. missing person was domiciled in Scotland on the date on which they were last known to be alive or had been habitually resident there throughout the period of one year ending with that date<sup>2</sup> **or**
2. the interested party
  - 2.1 is the spouse or civil partner of the missing person **and**
  - 2.2 is domiciled in Scotland at the date of raising the question with the DM or was habitually resident there throughout the period of one year ending with that date<sup>3</sup> or in a case where the pursuer in the action is the civil partner of the missing person
    - 2.2.a the two people concerned registered as civil partners of each other in Scotland **and**
    - 2.2.b it appears to the court to be in the interests of justice to assume jurisdiction in the case.

**Note:** Where the missing person is stated to have died before 1.3.78 the DM is bound by Scottish common law then relevant<sup>4</sup>.

*1 Presumption of Death (Scotland) Act 1977, s 2(3); R(G) 1/80;  
2 Presumption of Death (Scotland) Act 1977, s 1(3)(a); 3 s 1(3)(b); 4 R(G) 1/80*

B3174 Where the DM is satisfied that the circumstances of the case warrant making a determination of the date of death as in B3173 the DM should decide<sup>1</sup> on the balance of probabilities (see B3165) either that

1. it has been shown that the claimant has died (see B3175) **or**
2. the missing person has not been known to be alive for a period of at least seven years (see B3176 – B3177).

*1 Presumption of Death (Scotland) Act 1977, s 2(3)*

B3175 Where B3174 1. applies the DM should

1. determine the date of death **and**
2. where death has been shown but it is uncertain when, within any period of time, the missing person died, find that the person died at the end of that period.

B3176 Where B3174 2. applies the DM should find that the missing person died at the end of the day occurring seven years after the date on which the person was last known to be alive.

B3177 Also, in applying B3174 2. it is still necessary to show that the person is a missing person<sup>1</sup>. This involves considering the circumstances of the disappearance of the person claimed to be missing. The circumstances of the disappearance may also be relevant in considering the weight to be given to any evidence that the person is known to be alive<sup>2</sup>.

*1 Presumption of Death (Scotland) Act 1977, s 1; 2 R(G) 1/80*

## **Death in a country which permits polygamy**

B3178 The DM should note that

1. claimants often cannot produce documentary evidence of a wife's death
2. a death certificate showing the death was registered sometime after the death should be checked for authenticity since these are often false
3. a document issued at the time of death, for example a telegram or letter from relatives notifying the death, is more likely to be genuine (see B3179).

B3179 If the evidence in B3178 3. is not held a statement from a person who

1. was present at the death or funeral **and**
2. can state that the first wife was dead **and**
3. can state that the first wife had died before the husband had married again is acceptable as secondary evidence.



**Note:** See operational guidance for more details.

B3180 If there is any doubt about the wife's death, the case should be referred to the RVU.

B3181 – B3999

## **Appendix 1**

### **Records of birth in Pakistan and Bangladesh – (see B3080)**

Prior to the operation of the Basic Democracy Order 1959 there was no statutory system of registration of births. Although there was a voluntary system under which in rural areas the village chowkidar would when notified inform the tehsildar for the administrative area (now known as police) this rarely occurred. In urban areas the Municipalities and Cantonment Board Authorities were responsible but it would be unlikely for illiterate parents to notify a birth.

Consequently there are very few contemporaneous records of birth maintained in respect of periods prior to 1960 even in large towns.

Where a person born prior to 1960 seeks a certificate of birth in a rural area he applies to the Union Council Chairman of the place of his birth. Affidavits and declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record maintained under the Basic Democracy Order 1959 and copies of this entry are given as a certificate of birth.

Because under the old system registrations were passed to the administrative officer for the area, and in the belief that it gives some measure of authenticity, some Union Council Chairmen ask the local police officer to put the Police Station stamp on the certificate. The Police Station stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.

## **Appendix 2**

### **Records of birth in Azad Kashmir – (see B3080)**

There is no statutory system for the registration of birth in Azad Kashmir but the arrangements under the Basic Democracy Order 1959 are generally followed on a voluntary basis.

Prior to 1947 the village chowkidar might have been informed of a birth in his village. If so he was expected to notify the tehsildar for the administrative area (now police

authority) but in many cases he failed to do so. During the 1947 war all records held by the police authorities were lost or destroyed and therefore there are no contemporaneous records prior to 1947 in rural or municipal areas. From 1962 Union Councils were required to pass records of birth to the District Medical Officer but from 1969 records were required To Whom It May Concern: be sent to the Police authority for the area.

A certificate that the date of birth is confirmed by records held by a District Medical Officer does not imply that the District Medical Officer has made enquiries about the date of birth or that he has made any medical examination of the person concerned to establish his age.

When a person born prior to 1948 seeks a certificate of birth he applies to the Union Council Chairman of the place of his birth. Affidavits or declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record of registration of births for the current year and notified to the local Police Station. The Union Council Chairman will then give a certified copy of this registration of birth and in some cases it may be taken to the Police Station for insertion of the Police Station stamp. This stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.

## Appendix 3

### Gender Recognition - List of approved countries and territories (see B3118)

The Australian territories of Australian Capital Territory and Northern Territory and the states of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia
Austria
Belgium
Bulgaria
the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan and the Yukon Territory
Croatia
Republic of Cyprus

Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Iceland
Italy
Japan
Liechtenstein
Luxembourg
Malta
the Federal District of Mexico
Moldova
Netherlands
New Zealand
Norway
Poland
Romania
Russian Federation
Serbia
Singapore
Slovakia
Slovenia
South Africa
South Korea
Spain

Sweden
Switzerland
Turkey
Ukraine
the District of Columbia and all of the states of the United States of America except for Idaho, Ohio, Tennessee and Texas
Uruguay

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