

# Pay and time off work for parents

To use for employees whose babies are due on  
or after 6 April 2008

An employer guide to

- Statutory Maternity Pay and Leave
  - Statutory Paternity Pay and Leave
- including new rates from 6 April 2008

## Help and further guidance

Help and further guidance about tax and National Insurance contributions (NICs) is available from the following sources.

### The Internet

Go to our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

### Your Employer CD-ROM

Your Employer CD-ROM has most of the forms and guidance you will need to run your payroll throughout the year.

The CD-ROM has:

- a P11 calculator that will work out and record your employees' tax, NICs and Student Loan deductions every pay day with a linked P32 record of deductions that works out what you need to pay us
- a range of other Calculators that work out car and car fuel benefit, Statutory Payments and Student Loan deductions
- a P45 checker that tells you what gross pay and tax to date figures to enter on the P11 for a new employee.

There is also:

- a Learning Zone to help you understand payroll topics such as Statutory Payments, Student Loan deductions and PAYE Online
- a Payroll Basics section for new and less experienced employers explaining what to do when employing someone for the first time.

### Employer Helpbooks

Our Employer Helpbooks are designed to help you understand and operate PAYE, NICs and other payroll related matters.

The Helpbooks are for guidance only, they are not comprehensive and have no legal force.

We also have many other leaflets and booklets that give further guidance, for example:

- CWG2(2008) *Employer Further Guide to PAYE and NICs*
- CWG5(2008) *Class 1A NICs on benefits in kind*
- 480(2008) *Expenses and Benefits - A tax guide*
- 490(2008) *Employee travel - A tax and NICs guide for employers.*

You can view, download and print the full range of Helpbooks, booklets and other forms and guidance from our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers) or your Employer CD-ROM.

Or you can order copies from the Employer Orderline:

- from our website at [www.hmrc.gov.uk/employers/emp-form.htm](http://www.hmrc.gov.uk/employers/emp-form.htm)
- by phone **08457 646 646**
- by fax **08702 406 406**.

### Forms and guidance in Braille, large print and audio

For details of employer forms and guidance in Braille, large print or audio call the Employer Orderline on **08457 646 646** and ask to speak to the Customer Service Team.

### Yr Iaith Gymraeg

Ffoniwch **0845 302 1489** i dderbyn fersiynau Cymraeg o ffurflenni a chanllawiau.

### By phone - Employer Helplines

(We may record calls for quality and training purposes.)

New employers and employers with less than 3 years payroll experience	<b>New Employer Helpline</b> <b>0845 60 70 143</b> Monday to Friday 08:00 - 20:00 Saturday and Sunday 08:00 - 17:00.
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Employers with more than 3 years payroll experience	<b>Employer Helpline</b> <b>08457 143 143</b> Monday to Friday 08:00 - 20:00 Saturday and Sunday 08:00 - 17:00.
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If you have a hearing or speech impairment, and use a textphone	<b>0845 602 1380</b> (only people with specialised equipment such as Mincom are able to use this service.)
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A list of Helplines and opening hours is available:

- on our website at [www.hmrc.gov.uk/contactus/helplines.htm](http://www.hmrc.gov.uk/contactus/helplines.htm)
- on your CD-ROM, and
- in your Employer Bulletin.

### Your HM Revenue & Customs office

Your own HM Revenue & Customs office can also help you. All our office contact details are on our website at [www.hmrc.gov.uk/local/employers/index.htm](http://www.hmrc.gov.uk/local/employers/index.htm)

Please tell us your employer reference which is on correspondence from your HM Revenue & Customs office.

### In Person

We can offer you education and support on all aspects of your payroll explaining:

- what you need to do
- the deadlines you need to meet
- the forms you need to fill in
- the records you need to keep.

We also have a range of workshops which are free of charge on many payroll topics.

You can get further information about the workshops from our website at [www.hmrc.gov.uk/bst](http://www.hmrc.gov.uk/bst), or you can call the:

- New Employer Helpline on **0845 60 70 143**
- Employer Helpline on **08457 143 143**.

### Online Services

For information about our online services:

- go to [www.hmrc.gov.uk/online/index.htm](http://www.hmrc.gov.uk/online/index.htm)

For help and assistance using our online services contact the Online Services Helpdesk.

- Email [helpdesk@ir-efile.gov.uk](mailto:helpdesk@ir-efile.gov.uk)
- phone **0845 60 55 999**  
open 7 days a week 08:00 - 20:00.

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## Information

### Further help

For more information about Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP) you can:

- contact any HM Revenue & Customs office
- go to [www.direct.gov.uk/employee](http://www.direct.gov.uk/employee)
- go to [www.dwp.gov.uk](http://www.dwp.gov.uk)
- go to [www.dsdni.gov.uk](http://www.dsdni.gov.uk) or
- contact any Advisory, Conciliation and Arbitration Service (Acas) office (go to [www.acas.org.uk](http://www.acas.org.uk) for details), or **0845 74 74 747** or in Northern Ireland contact the Labour Relations Agency (LRA) (go to [www.lra.org.uk](http://www.lra.org.uk) for details) or **0289 03 41 442** about paternity or maternity leave or other employment rights.

Information on all aspects of employment legislation is also usually available from Citizens Advice Bureaux, low pay units, trade unions and other bodies.

A mother or father who is not entitled to SMP or SPP may be entitled to other government help. Please tell them to contact their local Jobcentre Plus office or in Northern Ireland the Jobs and Benefits office.

A Department for Work and Pensions leaflet NI17A *A Guide to Maternity Benefits, Statutory Maternity Pay and Maternity Allowance* is available for mothers who need more information on SMP or on Maternity Allowance (if they cannot get SMP). This also has details of other social security benefits and where to get more information. Go to [www.dwp.gov.uk/advisers/ni17a](http://www.dwp.gov.uk/advisers/ni17a)

Throughout this Helpbook further references to the Advisory, Conciliation and Arbitration Service (Acas) will be referred to as Acas go to [www.acas.org.uk](http://www.acas.org.uk) and in Northern Ireland reference to Labour Relations Agency (LRA) will be referred to as LRA go to [www.lra.org.uk](http://www.lra.org.uk)

### Visits to employers from HM Revenue & Customs

From time to time, our officers visit employers to see if their payroll is running smoothly. If we call on you we will ask to see your SMP/SPP records.

### Penalties

Legislation provides that employers failing or refusing to operate the Statutory Maternity Pay (SMP) scheme correctly can incur penalties. Like those in place for PAYE and NICs these penalties are civil (not criminal).

The penalties cover the following offences:

- a refusal by you to allow access to your records or a failure to comply with a formal information notice both of which attract a maximum penalty of £300.00 and £60.00 for each day the failure continues
- a failure to keep records could make you liable to a penalty up to a maximum of £3,000.00

- if you fraudulently or negligently produce incorrect records the penalty is up to a maximum of £3,000.00
- the refusal or repeated refusal or failure by you to pay SMP to your employee or the payment of an incorrect amount of SMP due to either fraud or negligence could make you liable to a penalty up to a maximum of £3,000.00
- obtaining either fraudulently or negligently incorrect funding could make you liable to a penalty up to a maximum of £3,000.00
- anyone who fraudulently or negligently makes an incorrect statement or declaration to establish entitlement to SMP could be liable to a penalty up to a maximum of £3,000.00.

Where it is considered that a penalty is appropriate it will be imposed by either an Officer of HMRC or the General Commissioners, but in all cases there is a right of appeal.

Any appeal against a penalty raised by an Officer of HMRC will be heard by the General Commissioners. Any appeal against a penalty determined by the General Commissioners (on a question of law or against the amount) will be to the High Court, in Scotland to the Court of Session as the Court of the Exchequer or in Northern Ireland the Court of Appeal (NI).

The outcome of any appeal could see the penalty upheld, varied or dismissed.

Similar penalties apply to the incorrect operation of the Statutory Paternity Pay (SPP) scheme.

### Maternity/Paternity leave and pay

The Department for Business, Enterprise and Regulatory Reform guidance gives information about maternity leave and paternity leave and pay. Go to [www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html)

Interactive information is available from [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

Free confidential advice on employment law including paternity leave is available from the Advisory, Conciliation and Arbitration Service (Acas) go to [www.acas.org.uk](http://www.acas.org.uk) or **0845 74 74 747**.

## Information *continued*

### Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP) calculator

There is an easier and quicker way to calculate SMP and SPP.

SMP and SPP calculators are on the Internet and on your Employer CD-ROM. This means you no longer need to work out the payments manually. The calculators will tell you:

- if your employee is entitled to SMP or SPP
- work out how much is due, **and**
- how much you can get back.

To access the calculators:

- go to our website at <http://www.hmrc.gov.uk/calcs/stat-calcs.htm>
- go to your CD-ROM and selection 'Calculators' in the main menu.

There is also a Learning Zone in your CD-ROM which will take you step-by-step through the process of paying and recovering SMP and SPP.

### Employees and employers in Northern Ireland

Arrangements in Northern Ireland are similar to those in Great Britain, but there are differences in detail:

- Northern Ireland has its own legislation covering SMP and SPP and maternity and paternity leave schemes
- the Incapacity Benefit Branch (IB), Castle Court, Belfast deals with social security claims. For more information go to [www.dsdni.gov.uk](http://www.dsdni.gov.uk) or phone **0289 03 36 000**
- for Jobcentre Plus in Northern Ireland the reference is the Jobs and Benefits office
- the Department of Employment and Learning, publications Maternity Rights - ER16 and Paternity Leave and Pay - ER34 provide basic information on these rights. More information including employment protection legislation is available from [www.delni.gov.uk](http://www.delni.gov.uk)

Free confidential advice on employment law is available from Labour Relations Agency (LRA). Go to [www.lra.org.uk](http://www.lra.org.uk) or phone **0289 03 41 442**.

# Terms and conditions used in this Helpbook

## General

An **employee** is a person whose earnings attract a liability for employee's primary and employer's secondary Class 1 National Insurance contributions (NICs), or would but for their age or level of their earnings.

Employees include office holders, for example, police officers, Members of Parliament, the judiciary and some company directors.

People who are classed as employed earners for Class 1 NICs liability, for example, agency workers, are also employees.

If you are not sure who is an employee and who is an employer for pay, contact your local HM Revenue & Customs office.

An **employer** is whoever is liable to pay the employer's secondary Class 1 NICs, or would but for the employee's age or the level of their earnings.

## Leave

For leave an employee is someone working under a contract of employment. The employer is the person who is employing them under that contract.

Office holders, for example, police officers, Members of Parliament, the judiciary and some company directors are not included as employees under legislation for leave purposes.

If you are not sure who is an employee and who is an employer for leave, contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

## Statutory Maternity Pay (SMP)

This is a legal entitlement to a certain amount of pay to help a mother take time off around the time of birth and lasts for up to 39 weeks. The SMP pay period may start on any day of the week where the mother continues to work beyond the 11th week, before the week the baby is due. She can choose the date she wants her SMP to start. The start date can also be triggered by the birth of the baby or a pregnancy related absence.

## Lower Earnings Limit (LEL)

This is the minimum level of earnings that an employee needs to qualify for some benefits. It is also the minimum level that an employee's Average Weekly Earnings (AWE) must reach in a specific period to qualify for SMP/SPP. For 2008-09 the LEL is £90.00 weekly.

## Maternity Leave

All employed women are legally entitled to a total of 52 weeks Maternity Leave regardless of their length of service. Women do not need to qualify for SMP to be able to take Maternity Leave. There are two types of Maternity Leave.

Ordinary Maternity Leave (OML) - the first 26 weeks' maternity leave.

Additional Maternity Leave (AML) - the second 26 weeks' maternity leave.

For more information go to [www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html)

## Statutory Paternity Pay (SPP)

This is a legal entitlement to a certain amount of pay to help a father take time off to care for a baby or support the mother in the first few weeks after the birth.

It is available to employees who are a:

- biological father
- partner/husband or civil partner who is not the baby's biological father
- mother's female partner in a same sex couple relationship.

## Paternity Leave

This allows a father to take time off to care for a baby or support the mother in the first few weeks after the birth.

It is available to employees who are a:

- biological father
- partner/husband or civil partner who is not the baby's biological father
- female partner in a same sex couple relationship.

**We have used 'father', 'he', 'him' and 'his' throughout this Helpbook when talking about people who can get SPP and paternity leave.**

They can choose to have one or two whole weeks pay and leave. This must be taken in a single block. It must be taken by the 56th day after the date of birth. If the baby is born early it can be taken any time between the actual date of birth and the end of an eight week period running from the Sunday of the week the baby was originally due.

For examples:

- go to [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)
- look in the Learning Zone on your Employer CD-ROM
- go to [www.businesslink.gov.uk/paternityandadoption](http://www.businesslink.gov.uk/paternityandadoption)

## New from 6 April 2008

### New SMP rates from 6 April 2008

Pay period started on or after 6 April 2008, the first Sunday in April.

- First 6 weeks of payment at 90% of Average Weekly Earnings, then
- the lower of:
  - 90% of Average Weekly Earnings, or
  - £117.18.

### New SPP rates from 6 April 2008

Pay period started on or after 6 April 2008, the first Sunday in April.

- Pay the lower of:
  - 90% of Average Weekly Earnings, or
  - £117.18.

## Merger of Employer Helpbooks

The Employer Helpbooks E15 Pay and time off work for parents and the E15(Supplement) Special cases, have now been merged for use from 6 April 2008. The merger of the Helpbooks will provide easier access to information on SMP for employers.

## Maternity leave for babies due on or after 6 April 2008

The Government proposes to change the rules on Maternity Leave for women whose babies are due on or after 6 April 2008, so that they are entitled to the benefit of the same non-pay contractual terms and conditions during Additional Maternity Leave as those to which they are entitled to during Ordinary Maternity Leave.

For more information go to

[www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html) or in Northern Ireland contact the LRA.

## Civil Partners

Under the Civil Partnership Act 2004 same sex couples in the UK have the opportunity to acquire a legal status for their relationship. Couples who register as civil partners will gain a package of rights and responsibilities reflecting those already available to married couples.

## Employment Rights

Mothers have a legal right to:

- paid time off for ante-natal care
- special health and safety protection when they are pregnant, have given birth recently or are breast feeding
- protection against unfair treatment or dismissal
- return to work after maternity leave.

Treating a woman unfairly on grounds of pregnancy or maternity leave is sex discrimination.

Dismissing someone because she is pregnant, or because they take or seek to take maternity or paternity leave, is automatically 'unfair dismissal'.

The Department for Business, Enterprise and Regulatory Reform guidance gives information about maternity and paternity leave. Go to

[www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html)

For further information on employment rights, contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

Information on all aspects of employment legislation is also usually available from accountants, Citizens Advice Bureaux, employer organisations, low pay units, trade unions and other private and voluntary sector bodies.

### Pay

As you work through the terms and conditions, if you decide that your employee is not entitled to SMP or SPP you will be told to issue a form SMP1 or SPP1. This will explain to your employee why you cannot pay them and what they need to do to get other Government help. It is important that you give them this form as soon as possible to help them with their claim. If your employee disagrees they can ask us to give a formal decision. If this happens we will give you more information at the time.

### Leave

If there is disagreement between you and your employee about their entitlement to leave or other employment provisions, you will want to discuss it together first.

You will probably also find it helpful to contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA go to [www.lra.gov.uk](http://www.lra.gov.uk) or phone **0845 74 74 747**.

Ultimately, if the dispute continues, your employee may want to take the case to an employment tribunal.

## What can my employee get?

### Statutory Maternity Pay (SMP) and maternity leave

To work out if your employee is entitled to SMP look at the date the baby is due, **not** the date the baby is born. To work out how much to pay from 6 April 2008 (this is the first Sunday in April), look at when the pay period started.

If the mother leaves your employment after the start of the 15th week before the week the baby is due you must pay her SMP if she qualifies for it. If SMP is not in payment before she leaves, she does not have to give notice of her intended date to start her SMP see page 29.

### Statutory Paternity Pay (SPP) and paternity leave

SPP and paternity leave may be due to someone who is a:

- biological father
- partner/husband or civil partner who is not the baby's biological father
- female partner in a same sex couple relationship.

When you work out if your employee is entitled - look at both the date the baby is due and the date the baby is born.

## Specific employments

### Agency workers

#### Pay

Agency workers can be treated as employees for PAYE tax and Class 1 NICs. If you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings, or would do if they were high enough, then you will have to pay them Statutory Maternity Pay (SMP) or Statutory Paternity Pay (SPP) if they satisfy the qualifying conditions. If you are not sure whether you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings contact your local HM Revenue & Customs office.

The rules on 'Evidence for entitlement' on page 11, apply to agency workers.

You must consider:

- has your employee worked for you long enough? See pages 12 for mothers and 15 for fathers, **and**
- does your employee earn enough? If they are not paid on every pay day, see pages 23 and 26. If they are paid on every pay day follow the guidance starting on page 21
- when should your employee give you dates for pay and leave? Where agency workers are not entitled to maternity or paternity leave they only have to give you 28 days notice of when they want to start being paid SMP or SPP.

#### Leave

Agency workers who are not employees (that is, not employed under a contract of employment) are not entitled to maternity or paternity leave. If you are not sure whether a worker is employed under a contract of employment, contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

### Casual workers

#### General

A casual worker is usually someone who works for somebody as and when they are required, but:

- they do not have to accept the work that is offered
- the person with the work does not have to offer it to them.

#### Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual worker's earnings then you will have to pay them Statutory Maternity Pay (SMP) or Statutory Paternity Pay (SPP) if they satisfy the qualifying conditions. If you are not sure whether you have to deduct PAYE tax and Class 1 NICs from the worker's earnings contact your local HM Revenue & Customs office.

The rules on 'Evidence for entitlement' on page 11, apply to casual workers.

You must consider:

- has your employee worked for you long enough? See pages 17 and 18, **and**

- does your employee earn enough? If they are not paid on every pay day see pages 23 and 26. If they are paid on every pay day follow the guidance starting on page 11
- when should your employee give you dates for pay and leave? If the casual worker is not entitled to leave they only have to give you 28 days notice of when they want to start being paid SMP or SPP.

If the casual worker is an employee and entitled to leave, follow the rules on page 11 for mothers and page 14 for fathers.

#### Leave

Casual workers who are not employees (that is, are not employed under a contract of employment) are not entitled to maternity or paternity leave. Casual workers who are employees could be eligible if they satisfy all the qualifying conditions. If you are not sure whether a worker is employed under a contract of employment or not contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **0845 74 74 747** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **0289 03 21 442**.

### Mariners

#### Pay

Mariners cannot get SMP or SPP if:

- they are employed on a foreign-going ship, **or**
- you do not have a place of business in the UK.

Mariners can get SMP or SPP if you have a place of business in the UK and they are on a home-trade ship.

Foreign-going mariners pay a special rate of National Insurance contributions under category letters: R, T, W, Q, N, O, H, K, V.

There are special rules on 'Has your employee worked for you long enough?' for employees who work outside the UK, see page 13 for mothers and page 15 for fathers. All the other rules apply. If you are not sure which of the above applies, contact your local HM Revenue & Customs office.

#### Leave

Mariners can get maternity or paternity leave if they:

- are employed on board a ship registered and maintained under Section 8 of the Merchant Shipping Act 1995, specifying a port in Great Britain or Northern Ireland as the port to which the vessel belongs
- do not work wholly outside Great Britain or Northern Ireland, **and**
- are ordinarily resident in Great Britain or Northern Ireland.

Mariners cannot get maternity or paternity leave if they are the master, or a member of the crew, of a fishing vessel where they are paid only by a share of the profits or gross earnings of the vessel. If you are not sure whether the mariner can get leave or not contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or seek independent legal advice.

## Forms you may need to use

### Statutory Maternity Pay (SMP)

- Form MAT B1 *Maternity Certificate*.

The expectant mother will give you this form to confirm that she is pregnant. You must **not** pay SMP without it or similar evidence.

The form will be signed by a doctor or midwife and issued after the 20th week of pregnancy.

- Form SMP1 *Why I cannot pay you SMP*.

Use this form to tell your employee she is not entitled to Statutory Maternity Pay.

Form SMP1 is available from:

- Jobcentre Plus offices, or in Northern Ireland the Jobs and Benefits offices - details are in your phone book, or go to [www.dwp.gov.uk/lifeevent/benefits/statutory\\_maternity\\_pay.asp](http://www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp)  
In Northern Ireland go to [www.dsdni.gov.uk](http://www.dsdni.gov.uk)
- Form SMP2 *Statutory Maternity Pay record sheet*.

Use this form to keep a record of Statutory Maternity Payments.

### Statutory Paternity Pay (SPP)

- Form SC3 *Becoming a parent*.

Use this form to tell your employee about the terms and conditions relating to SPP. It includes a tear-off statement for your employee to tell you about dates and leave, with a declaration. You must have this declaration before you can make payments.

- Form SPP1 *Why I cannot pay you SPP*.

Use this form to tell your employee he is not entitled to SPP.

- Form SPP2 *Statutory Paternity Pay record sheet*.

Use this form to keep a record of statutory paternity payments and any changes in dates.

All HM Revenue & Customs maternity and paternity forms are available from:

- Employer CD-ROM
- Orderline, phone **08457 646 646**
- [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

You can use your own version of any of the forms, except form MAT B1.

## Using your own versions of the maternity and paternity forms

You can produce your own computerised or paper versions of these forms. There is no formal approval process.

### **Form SMP1 *Why I cannot pay you SMP***

It must include:

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay Statutory Maternity Pay (SMP), **or**
- if you have made some payment, but do not think you should make any more
  - the total number of weeks you have paid or think you should pay
  - the reason why you have not paid
  - the date you stopped paying.

It will help your employee if you also include information about what she should do:

- if she disagrees with your decision
- to claim Maternity Allowance.

### **Form SMP2 *Statutory Maternity Pay record sheet***

It must include:

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SMP pay period began
- a record of any weeks, in the 39 week period when SMP was not paid, with reasons.

You may also find it helpful to record:

- the week baby due
- the 15th week before the week baby due
- the baby's date of birth
- the date your employee told you she planned to start her maternity leave
- the date she started her maternity leave
- if your employee changed her mind, when she told you the new date she wanted to start her leave, and the new date.

### **Form SC3 *Becoming a parent, form SC3***

It must include your employee's name and National Insurance number and a declaration that they:

- intend to support the mother or care for the child, **and**
- have or expect to have responsibility for the upbringing of the child, **and**

- are either:
  - the baby's biological father, **or**
  - married or in a civil partnership with the baby's mother, **or**
  - living with the mother in an enduring family relationship, but are not an immediate relative.

It must also include:

- the expected date of birth, and in cases where the baby has been born, the date of birth
- the date from which the employee wants to be paid Statutory Paternity Pay (SPP)
- whether the employee wants to be paid one week or two.

### **Form SPP1 *Why I cannot pay you SPP***

It must include:

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay SPP, **or**
- if you have made some payment, but do not think you should make any more:
  - the reason why you have not paid
  - the date you stopped paying.

It will help your employee if you also include information about what he should do:

- if he disagrees with your decision
- to claim other Government help.

### **Form SPP2 *Statutory Paternity Pay record sheet***

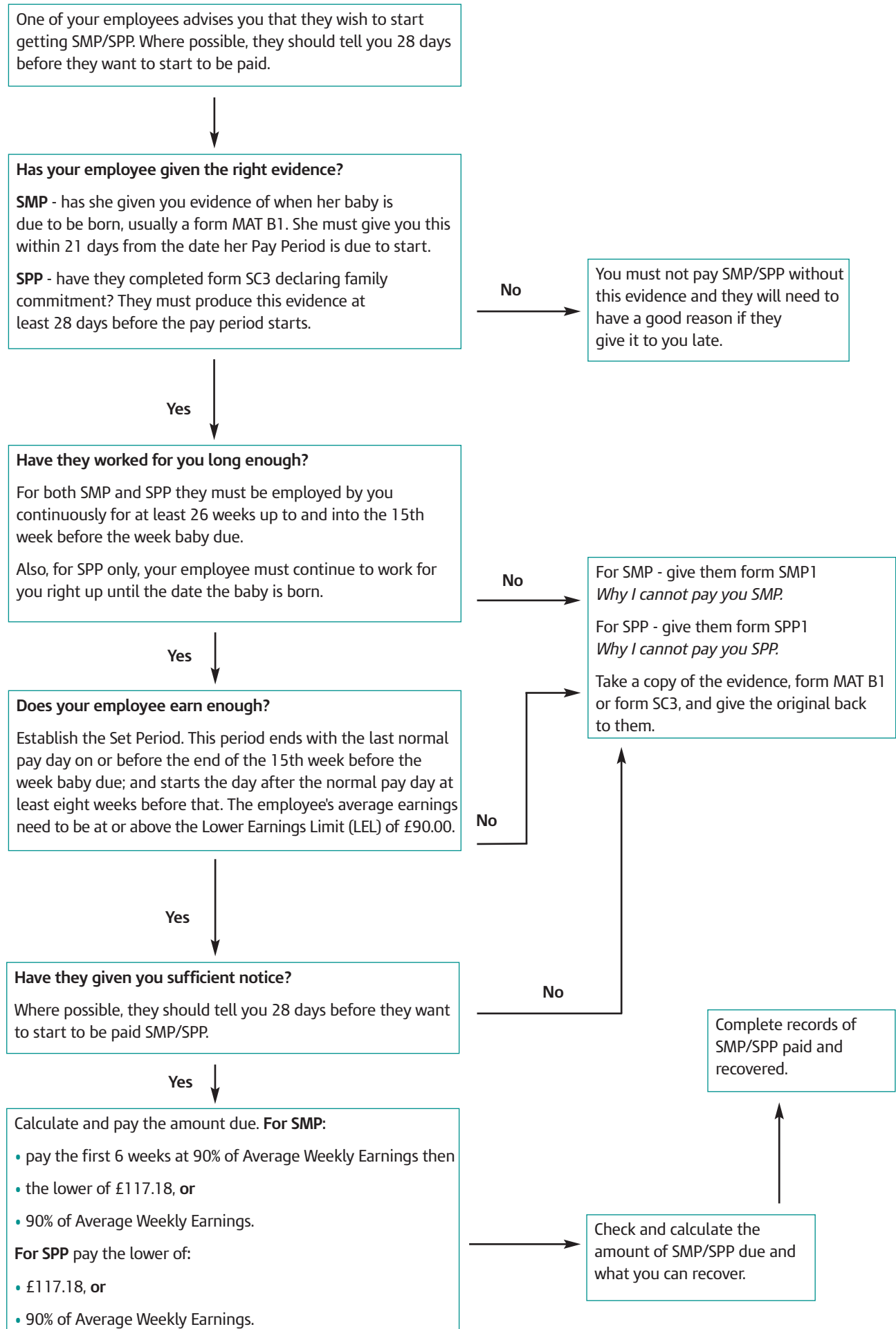
It must include:

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SPP pay period began
- a record of any unpaid SPP, with reasons.

You may also find it helpful to record:

- the week baby due
- the 15th week before the week baby due
- the baby's date of birth
- the date your employee told you he planned to start his paternity leave
- if your employee changed his mind, when he told you the new date he wanted to start his leave, and the new date.

# Flowchart - Operating the SMP/SPP schemes



## Terms and conditions for MOTHERS Evidence for entitlement

### Proof of pregnancy

Your employee must produce medical evidence of pregnancy to get Statutory Maternity Pay (SMP). You can allow leave without medical evidence. The medical evidence is usually the form MAT B1 *Maternity Certificate*. But you can accept any document, signed by a doctor or midwife, that includes the date the baby is due. (The form MAT B1 is signed by a doctor or midwife and is issued no earlier than 20 weeks before the week baby due date.)

#### Mother does not give medical evidence

Tell the mother that you cannot pay her without the medical evidence and she will need a good reason if she gives it to you too late.

### Time limits

The time limit for producing medical evidence for pay is 21 days from the start of the SMP pay period. If there is a good reason for the evidence being produced late you must accept it, provided the evidence is produced by the end of what would be the 13th week of the SMP pay period.

### Length of employment

A mother will get Ordinary Maternity Leave and Additional Maternity Leave no matter how long she has worked for you.

To get Statutory Maternity Pay (SMP) the mother must be employed by you continuously for at least 26 weeks continuing into the 15th week before the week the baby is due. Count part weeks of employment as full weeks.

Find the date the baby is due in the table on pages 43 and 44, then read across to the latest start date for employment with you. If she started work after that date she does not qualify - see the note below.

#### Employee has been employed long enough

Go to page 21 for 'Does your employee earn enough?'

#### Employee has not been employed long enough

Give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate*, and give the original back to her.

### What counts as earnings

Earnings do not affect maternity or paternity leave.

Use the amount before deductions such as PAYE, NICs and pension contributions.

#### Include:

- Payments which are earnings for Class 1 National Insurance contributions. (Your employee does not have to have paid NICs.)
- All earnings paid in the period, including money earned outside the period, such as holiday pay, overtime, bonuses and any lump sum paid for arrears of pay.

- Statutory Sick Pay.
- Statutory Maternity Pay.
- Statutory Paternity Pay.
- Statutory Adoption Pay.

Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) depend on your employee's Average Weekly Earnings (AWE) in a set period. You will need to work out the dates of the set period and how much on average your employee has earned in that period. See the Quick Method on page 21 to see if they qualify but if you are in any doubt, or your employee disagrees with your decision, you must work through the detailed check on pages 21 and 22. Always round up fractions of a penny when you work out 90% of your employee's AWE. When you work out how much you pay, look at when the pay week began.

For help on screen go to [www.hmrc.gov.uk/calcs/smp.htm](http://www.hmrc.gov.uk/calcs/smp.htm) for an interactive SMP calculator or have a look at your Employer CD-ROM where you will find a calculator and a learning program to help you understand your SMP responsibilities.

### When should your employee give you dates for pay and leave?

#### Leave/Pay

Your employee should tell you when she expects to stop work by the Saturday of the 15th week before the week baby due (use tables on pages 43 and 44). You must confirm the date in writing including when you expect her back. (See sample letter on page 19 or on the Employer CD-ROM.)

This notice can also apply for pay.

You should accept any delay in giving notice if the employee has good reason.

Notice can be given:

- personally
- by someone else
- by post, fax or email.

#### Choosing dates

Your employee has the right to choose when she wants to start maternity pay and leave. But the date cannot be more than 11 weeks before the week baby due. (Use the tables on pages 43 and 44).

#### Change of mind

Your employee can change her mind about the start date but should give you 28 days notice of their intended new start date. You should confirm the new date in writing.

#### Returning after Maternity Leave

If the mother is returning to work from maternity leave earlier than previously planned or later than the previously agreed date she **must** give you eight weeks notice of when she intends to start work again.

## Terms and conditions for **MOTHERS** *continued*

### Employee does not give acceptable notice

#### Pay

If your employee did not give you 28 days notice and she has not got a good reason for being late (see page 11 paragraphs about 'Choosing dates' and 'Change of mind') give her form SMP1 Why I cannot pay you SMP. Take a copy of the form MAT B1 Maternity Certificate, and give the original back to her.

#### Leave

You should discuss and agree a suitable start date with your employee. She may have had good reasons why she could not give you proper notice, and if so you should accept them. If not, you are entitled to insist on a notice period which suits you, although you cannot, in any circumstances, delay the start of leave beyond the day following the birth.

### Ordinary and Additional Maternity Leave

All employed women are legally entitled to up to one year's maternity leave. Women do not need to qualify for SMP to be able to take maternity leave. There are two types of maternity leave:

- Ordinary Maternity Leave is the first 26 weeks', **and**
- Additional Maternity Leave is the second 26 weeks'.

All employed women are entitled to both, giving a total of 52 weeks maternity leave regardless of their length of service.

For more information go to

[www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html](http://www.berr.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html)

or contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in

Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

### Agency workers

Agency workers may not have been placed with clients in every week from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

If the agency worker was placed with clients by you in every week she will satisfy the employment condition. If she was not placed with clients by you in every week, and particularly in the 15th week before the week baby due, you need to check why not.

She can still get SMP if:

- you did not have work to offer her
- she did not work because she was on paid leave under the Working Time Regulations
- you offered her work and she turned it down because she was sick or pregnant.

If she did not work because she was sick, then to get SMP she **must** do some more work for a client through you within 26 weeks of her first day of sickness. If she did not work in the 15th week before the week baby due, then to get SMP she **must** do some more work for a client through you before starting her maternity absence.

### Supply teachers, seasonal workers or other sporadic employment

Supply teachers, seasonal workers and other employees who work as and when you need them may not have worked for you in every week from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due.

For SMP in this instance a week means Sunday to Saturday, as a week means different things in different contexts. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

If she did work for you in every week she will satisfy the employment condition.

If she did not work for you in every week you need to check why not.

## Terms and conditions for **MOTHERS** *continued*

She can still get SMP if she did not work because:

- she was on paid leave under the Working Time Regulations, **or**
- you did not have work to offer her.

If you offered her work and she turned it down, she may still be able to get SMP - check the relevant paragraph on pages 17 and 18 depending on why she turned the work down.

### Employee works abroad

Where she works for you outside the UK between:

- the latest start date for employment with you, **and**
- the Sunday of the 15th week before the week baby due.

She can get Statutory Maternity Pay (SMP), if you were liable to pay Class 1 National Insurance contributions (NICs) on her earnings throughout that period.

She can still get SMP if you would have been liable to pay Class 1 NICs if her earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the Sunday of the 15th week before the week baby due are on pages 43 and 44.

If you were not liable to pay Class 1 NICs throughout that period and she worked for you in the European Economic Area, see page 42 for the list of countries, she may still be able to get SMP, see the paragraph below.

Where she works for you within the European Economic Area from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due

she can get SMP if:

- she worked for you in the UK in the 15th week before the week baby due, **and**
- you were liable to pay Class 1 NICs on her earnings for that week, or would have been if her earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

### Break in employment because of pregnancy

If the mother is a short term contract or agency worker who did not work for you from:

- the latest start date for employment with you, **and**
- the Sunday of the 15th week before the week baby due

she can still get SMP if she:

- was on maternity leave and she worked for you before and after the break, **or**
- was not working because of a birth, and she worked for you before and after the break, and the break is not more than 26 weeks.

If she has an ongoing contract of service during such a break she would remain continuously employed.

All the other rules apply.

The tables for working out the periods to use are on pages 43 and 44.

## Terms and conditions for FATHERS When should your employee give you dates for pay and leave?

### Declaration of family commitment

Give the father form SC3 *Becoming a parent* which advises your employee of the terms and conditions relating to SPP and paternity leave.

It also has a tear-off slip for a declaration covering family commitment.

You **must not** pay SPP without a declaration, but you can allow leave without one.

If you consider that the employee has made a false declaration, you should contact your HM Revenue & Customs office for advice. They can investigate and, if appropriate, consider penalising the employee.

**You must not ask for medical evidence of the pregnancy.**

#### Father gives declaration

Go to the 'Length of employment' section below.

#### Father does not give declaration

Tell the father that you cannot pay him without the declaration and he will need a good reason if he gives it to you late.

### Length of employment

The length of time the father must have worked for you to get Statutory Paternity Pay (SPP) and paternity leave is split into two.

#### Step 1

He must work every week from:

- the latest start date for employment with you. If he started work after that date he does not qualify - see the note below, **and**
- up to and including the Sunday of the 15th week before the week baby due.

#### Step 2

He must continue to work for you in every week from the 15th week before the week baby due right up until the baby is born. If he stops working for you before the baby is born he is not entitled to SPP or paternity leave.

A week, in this instance, means Sunday to Saturday. Count part weeks as full weeks.

Tables showing the week baby due date, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

#### Employee has been employed long enough

Go to page 21 for the 'Quick method' section.

#### Employee has not been employed long enough

#### Pay

Give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to him.

#### Leave

Tell him that he does not qualify for statutory paternity leave. This does not have to be in writing and there is no special form. You may of course reach an agreement about

time off. You may find it helpful to contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

### Time limits

The time limit for producing evidence to get pay is 28 days before the start of payment. If there is a good reason for the evidence being produced late you must accept it, provided the evidence is produced by the end of the SPP pay period.

### Leave/Pay

Your employee should tell you when he expects to stop work by the Saturday of the 15th week before the week baby due (use tables on pages 43 and 44).

This notice can also apply for pay.

- He must confirm the date of birth.
- You can ask for this in writing.
- You are not entitled to ask for evidence of the birth.

You should accept any delay in giving notice if the employee has good reason. Employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and the actual date of birth.

Notice can be given:

- personally
- by someone else
- by post, fax or e-mail.

#### Choosing dates

Your employee has the right to choose when he wants to take leave within a set period. Usually he can choose to take one or two whole weeks leave, but not two separate weeks, any time up to eight weeks after the date of birth or if the baby was born early up to eight weeks after the Sunday of the week in which the baby was due.

### Employee does not give acceptable notice

#### Leave/Pay

If your employee did not give you 28 days notice and he has not got a good reason for being late you can delay the start of leave and the pay period until you have had 28 days notice. However, employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and the actual date of birth or if the baby was born early up to eight weeks after the Sunday of the week in which the baby was due.

#### Change of mind

Your employee can change his mind about the dates but should give you 28 days notice of his intended dates. Employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and the actual date of birth.

## Terms and conditions for FATHERS *continued*

### Employee works abroad

The length of time the father must have worked for you to get Statutory Paternity Pay (SPP) is split into two.

#### Step 1

Where he works for you outside the UK from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due he can get SPP, if you were liable to pay Class 1 NICs on his earnings throughout that period.

He can still get SPP if you would have been liable to pay Class 1 NICs if his earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the Sunday of the 15th week before the week baby due are on pages 43 and 44.

If you were not liable to pay Class 1 NICs throughout that period and he worked for you in the European Economic Area, see page 42 for the list of countries, he may still be able to get SPP, see the paragraph below.

Where he works for you within the European Economic Area (for a list of the countries see page 42) from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due.

He can get SPP if:

- he worked for you in the UK in the 15th week before the week baby due, **and**
- you were liable to pay Class 1 NICs on his earnings for that week.

He can still get SPP if you would have been liable to pay Class 1 NICs if his earnings had been higher.

Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

#### Step 2

To get SPP the father must continue to work for you from the 15th week before the week baby due right up until the baby is born. It does not matter where he works, or whether you are liable to pay Class 1 NICs. All other SPP rules apply.

### Agency workers, supply teachers, seasonal workers or other sporadic employment

You may not have placed agency workers with clients in every week.

If the agency worker was placed with clients by you in every week he can get SPP. If he was not placed with clients by you in every week, and particularly in the 15th week before the week baby due, you need to check why not.

If you did not have work to offer him he can still get SPP.

If you offered him work and he turned it down, he may still be able to get SPP.

If he did not work because he was on paid leave under the Working Time Regulations he can get SPP. The leaflet 'Your guide to the Working Time Regulations' gives more information and can be obtained from the BERR website at [www.berr.gov.uk/employment/employment-legislation/working-time-regs/index.html](http://www.berr.gov.uk/employment/employment-legislation/working-time-regs/index.html)

If he did not work because he was sick, then to get SPP he must do some more work for a client through you within 26 weeks of his first day of sickness.

If he did not work in the 15th week before the week baby due, then to get SPP he must do some more work for a client through you before starting his paternity absence.

Supply teachers, seasonal workers, and other employees who work as and when you need them may not have worked for you in every week.

If your employee worked for you in every week he will have satisfied the employment condition. If he didn't work for you in every week you need to check why not.

He can still get SPP if:

- he did not work because he was on paid leave under the Working Time Regulations
- you did not have work to offer him.

If you offered him work and he turned it down, he may still be able to get SPP - check the relevant paragraph on pages 17 and 18 depending on why he turned the work down.

## Terms and conditions for FATHERS *continued*

### Leave – general

If there is no contract of employment then agency workers cannot usually get paternity leave, see page 7.

Supply teachers who work under a contract of employment can get paternity leave.

There are special rules on how long they must have worked for you, see 'Leave - How long has he worked for you?' below.

Seasonal workers and other employees who work under a contract of employment as and when you need them usually get paternity leave. There are special rules on how long they must have worked for you, see 'Leave - How long has he worked for you?' below.

#### Leave – How long has he worked for you?

The length of time the father must have worked to get paternity leave is split into two.

##### Step 1

He may not have worked in every week from:

- the latest start date for employment with you, **and**
- up to and including the Sunday of the 15th week before the week baby due.

##### Step 2

He may not have continued to work in every week from the 15th week before the week baby due right up until his leave starts.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

If he did work for you in every week in Step 1 and Step 2 he can get paternity leave. If he didn't work for you in every week you need to check why not.

If he did not work because he was sick, on paternity, adoption or parental leave (or for female partner, maternity leave), on a temporary lay-off or on holiday, he can still get paternity leave if the contract continues.

If the contract does not continue, he can still get paternity leave if:

- he is sick or injured and is then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily
- he is not working but his contract is regarded as continuing for some purposes, by arrangement or custom
- he is not working for some other reason specified on pages 17 and 18.

If you need more information about this please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or seek independent legal advice.

## Mother's Female Partner

### Length of time they must have worked for you

The length of time the mother's female partner must have worked to get SPP and paternity leave is split into two.

#### Step 1

She must work every week from:

- the latest start date for employment with you, and
- up to and including the Sunday of the 15th week before the week baby due.

#### Step 2

She must continue to work in every week from the 15th week before the week baby due right up until the baby is born.

A week means Sunday to Saturday. Count part weeks, as full weeks. Tables showing week baby due, the latest start date for employment with you and the 15th week before the week baby due are on pages 43 and 44.

If the mother's female partner did not work for you during the periods above because of pregnancy, she can still get SPP and paternity leave if she:

- was on maternity leave, and
- she worked for you before and after the break.

## **MOTHERS and FATHERS** Has your employee worked for you long enough?

### **Reinstatement after dismissal**

If either the mother or father did not work for you during the period you worked out using the tables on pages 43 and 44:

- because you dismissed them, **and**
- they are then reinstated because an employment tribunal decides that you dismissed them unfairly, **or**
- if you reinstate them as a result of a statutory grievance procedure

they are entitled to SMP or SPP and paternity leave, as if they had not been dismissed.

### **Reinstatement following service in the Armed Forces**

If either the mother or father did not work for you during the period you worked out using the tables on pages 43 and 44, because they were serving in the Armed Forces and they return to work for you within six months of the end of their service in the Forces under the Reserve Forces (Safeguard of Employment) Regulations, they may still be able to get SMP or SPP and paternity leave.

For SMP the mother must have been continuously employed by you for at least 26 weeks by the end of the 15th week before the week baby due. Do not count the period she served in the Armed Forces as part of the 26 weeks.

To get SPP and paternity leave the length of time father must have worked is split into two.

#### **Step 1**

He must have been continuously employed by you up to and including the 15th week before the week baby due. Do not count the period he served in the Armed Forces as part of the 26 weeks.

#### **Step 2**

He must continue to work for you right up until the baby is born.

A week, in this instance, means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week baby due are on pages 43 and 44.

### **Break in employment because of trade disputes or industrial action**

If either the mother or father did not work for you during the period you worked out using the tables on pages 43 and 44, because they were on strike, they may still be able to get SMP or SPP and paternity leave.

For SMP the mother must have been continuously employed by you for at least 26 weeks by the end of the 15th week before the week baby due.

Do not count the period she was on strike, even for one day, as this week will not count as part of the 26 weeks.

To get SPP and paternity leave the length of time the father must have worked is split into two.

#### **Step 1**

He must have been continuously employed by you up to and including the 15th week before the week baby due. Do not count the period he was on strike as part of the 26 weeks.

#### **Step 2**

He must continue to work for you right up until the baby is born.

A week, in this instance, means Sunday to Saturday. Count part weeks as full weeks. Tables showing the 15th week before the week baby due are on pages 43 and 44.

### **Break in employment because of temporary cessation of work**

If either the mother or father is a short-term contract or agency worker who did not work for you during the period you worked out using the tables on pages 43 and 44, because you did not have work to offer them, they can get SMP or SPP and paternity leave. Employees with an ongoing contract of service during such a break would remain continuously employed. All the other rules apply.

### **Break in employment because of public holidays**

If either the mother or father is a short-term contract or agency worker who did not work for you during the period you worked out using the tables on pages 43 and 44, because of public holidays, they can get SMP and maternity leave or SPP and paternity leave. All the other rules apply.

### **Break in employment because of sickness or injury**

If either the mother or father is a short-term contract or agency worker who did not work for you for the whole of period you worked out using the tables on pages 43 and 44, because they were sick or injured, they can get SMP or SPP and paternity leave if the total period of incapacity is 26 weeks or less. Employees with an ongoing contract of service during such a break would remain continuously employed. All the other rules apply.

## MOTHERS and FATHERS *continued*

### Break in employment because of adoption leave

If either the mother or father is a short-term contract or agency worker who did not work for you during the whole of the period you worked out using the tables on pages 43 and 44:

- because they were on adoption leave, **and**
- they worked for you before and after the break

they can get SMP or SPP and paternity leave. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

See the Employer Helpbook E16(2008) *Pay and time off work for adoptive parents*, for more information about adoption leave.

### Break in employment because of paternity and parental leave

If either the mother or father is a short-term contract or agency worker who did not work for you during the whole period you worked out using pages 43 and 44:

- because they took paternity leave when they were adopting a child or when a baby was born, **and**
- because they took parental leave, **and**
- they worked for you before and after the break

they can get SMP or SPP and paternity leave. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

**The tables for working out the periods to use are on pages 43 and 44.**

For more information on parental leave see the Department for Business, Enterprise and Regulatory Reform publication *Parental leave - A guide for employers and employees*, at [www.berr.gov.uk/employment/workandfamilies](http://www.berr.gov.uk/employment/workandfamilies)

For Northern Ireland contact the Department of Employment and Learning, Employment Rights Branch on **028 9025 7580** or go to [www.delni.gov.uk](http://www.delni.gov.uk)

### Change of employer

If you take over a business or part of a business and the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 2006 are often referred to as the TUPE Regulations.

The regulations apply when you take over an economic entity (a business, part of a business or a service provision) and take over the contracts of employment of the employees being transferred with the business.

The 'employee liability information' which the transferor employer must provide will give the identities of those employees being transferred with the business.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk)

#### If the regulations do not apply continuity of employment may not be broken if:

- a teacher in a school maintained by a local education authority moves to another school maintained by the same authority, including maintained schools where the governors of the school, rather than the local education authority, are the teacher's employer
- one corporate body takes over from another as the employer by or under an Act of Parliament
- the employer dies and their personal representative or trustees keep the employee on
- there is a change in the partners, personal representatives or trustees
- the employee moves from one employer to another and at the time of the move the two employers are associated, for example:
  - one is controlled by the other either directly or indirectly, **or**
  - both companies are controlled by a third party, either directly or indirectly.

#### If continuity of employment is not broken the:

- mother can get SMP
- father can get SPP and paternity leave.

This applies as long as they work for you and the previous employer during the period you worked out using the tables on pages 43 and 44.

#### If continuity of employment is broken and:

- you take on the business after the start of the 15th week before the week baby due, the previous employer must pay SMP to the mother if she was employed by the previous employer in the 15th week before baby due. The woman is still entitled to 52 weeks maternity leave
- you take on the business before the start of the 15th week before the week baby due, the mother **cannot** get SMP (the woman will be entitled to maternity leave)
- you take on the business after the birth of the baby, the previous employer **must** pay SPP to the father
- you take on the business before the birth of the baby, the father **cannot** get SPP or paternity leave.

All the other rules apply. The tables for working out the periods to use are on pages 43 and 44.

## When should your employee give you dates for pay and leave?

### Acknowledging your employee's notice for SMP and leave

You must write to the mother within 28 days of the date she told you when she wants to take her maternity leave, to confirm:

- the date she intends to stop work
- the date you expect her to return to work.

Use 'Text A' if she is entitled to Statutory Maternity Pay (SMP) and 'Text B' if she is not entitled to SMP.

These letters are available on the Employer CD-ROM.

#### Text A

As we discussed, you are eligible for 52 weeks maternity leave, made up of 26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave. Given your chosen start date of *[insert date]* your maternity leave will end on *[insert date]*. You are eligible for 39 weeks' Statutory Maternity Pay (SMP).

Your SMP will be £*[insert amount]* from *[insert date]* to *[insert date]* and £*[insert amount]* from *[insert date]* to *[insert date]*.

If you want to change the date your maternity leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before *[insert leave starts date]* whichever is sooner.

If you decide to return to work before *[insert date leave ends]* you must give me at least eight weeks' notice.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant or breastfeeding mothers.

If you have any questions about any aspect of your maternity pay and leave entitlements please do not hesitate to get in touch with me.

#### Text B

You are not eligible for Statutory Maternity Pay (SMP) but as we have discussed, you are eligible for 52 weeks maternity leave, made up of 26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave. Given your chosen start date of *[insert date]* your maternity leave will end on *[insert date]*.

The form SMP1 (enclosed) explains why you do not qualify for Statutory Maternity Pay (SMP). You may however, be, entitled to Maternity Allowance. Go to the Department for Work and Pensions website [www.dwp.gov.uk](http://www.dwp.gov.uk) for more information or if you take this form to the Jobcentre Plus or in Northern Ireland the Jobs and Benefits office at *[insert local details from the phone book]*, they will be able to tell you more.

If you want to change the date your maternity leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before *[insert leave starts date]* whichever is sooner.

If you decide to return to work before *[insert date leave ends]* you must give me at least eight weeks notice.

If you decide not to return to work you must still give me proper notice. Your decision will not affect your entitlement to SMP.

As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I have already carried out an assessment to identify hazards in our workplace that could be a risk to any new, expectant or breastfeeding mothers.

If you have any questions about any aspect of your maternity pay and leave entitlements please do not hesitate to get in touch with me.

## Does your employee earn enough?

### How to work out the set period

The 'set period' is needed to establish the earnings to be used and the number of days, weeks or months to divide those earnings by. All earnings paid in the 'set period' will be divided by the number of days, weeks or months in that 'set period'.

Regulations define the 'set period' as the period between:

**Date 1** the last normal pay day on, or before the Saturday of the Qualifying Week (QW), this is the 15th week before the week baby due. This pay day will be **Date 1** and is the end of the 'set period', and

**Date 2** the last normal pay day falling not less than eight weeks before the pay day at **Date 1**. **Date 2** will be the day after this pay day and is the start of the 'set period'.

You should include all the earnings paid on, or after, **Date 2**, up to and including those paid on **Date 1**.

The 'set period' ends with the last normal pay day on or before the end of the 15th week before the week baby due and starts with the day after the last normal pay day at least 8 weeks before that.

See the examples below on how to work out the 'set period' and Average Weekly Earnings correctly.

#### Example - weekly paid employee

Employee paid every Friday

Date baby due 12/09/08

15th week before week baby due 25/05/08 to 31/05/08

Pay day at least 8 weeks before 30/05/08

Start of the set period - Date 2

Last pay day on, or before Saturday of the 15th week (end of set period - Date 1)

Pay days										Total
04/04	<b>05/04</b>	11/04	18/04	25/04	02/05	09/05	16/05	23/05	<b>30/05</b>	
Earnings										Total
		120.11	120.00	80.00	110.00	120.00	98.10	120.00	92.00	860.21

The set period is therefore from 5 April 2008 to 30 May 2008

Average Weekly Earnings - Total earnings £860.21 ÷ 8 = **£107.52625**

Do not round this Average Weekly Earnings figure up or down to whole pence.

#### Example - monthly paid employee

Employee paid on the last working day of month.

Date baby due 12/09/08

15th week before week baby due 25/05/08 to 31/05/08

Pay day at least 8 weeks before 30/05/08

Start of the set period - Date 2

Last pay day on, or before Saturday of the 15th week (end of set period - Date 1)

Pay days				Total
31/03/08	<b>01/04/08</b>	30/04/08	<b>30/05/08</b>	
Earnings				Total
		685.75	723.55	1,409.30

The set period is therefore 1 April 2008 to 30 May 2008

Average weekly Earnings - Total earnings = £1,409.30 ÷ 2 = £704.65 × 12 = £8,455.80 ÷ 52 = **£162.61153**

Do not round this Average Weekly Earnings figure up or down to whole pence.

## Does your employee earn enough? *continued*

### Quick method for calculating Average Weekly Earnings

#### Babies due between 15 July 2007 and 19 July 2008

If your employee always earns less than £87.00 gross a week they will not qualify for Statutory Maternity Pay (SMP) or Statutory Paternity Pay (SPP). Go to the 'Employee does not earn enough' section below.

#### Babies due between 20 July 2008 and 18 July 2009

If your employee always earns less than £90.00 gross a week they will not qualify for SMP/SPP. Go to the 'Employee does not earn enough' section below.

#### Pay period starts on or before 5 April 2008

If your employee always earns more than the amounts shown above go to 'Employee earns enough' section below.

#### Pay period starts on or after 6 April 2008

If your employee always earns more than the amounts shown above go to 'Employee earns enough' section below.

If your employee sometimes earns more or less than £90.00 a week you must work out their Average Weekly Earnings (AWE). Use the weekly check sheet below or the monthly check sheet on page 22.

### Weekly paid - How to work out Average Weekly Earnings

To work out AWE you must:

- always use the set period - worked out using the check sheet
- only include earnings from the set period.

#### To work out AWE for employees paid in multiples of a week, for example, weekly, fortnightly or other multiple weekly if you do not pay your employees in a regular pay pattern

1. Find the date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby is due. (Use the tables on pages 43 and 44.)

3. Find the date of the last normal pay day on or before that Saturday. **This is the last day of the set period.**

4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example, if the pay day is 22 June, enter 23 June. **This is the first day of the set period.**

5. Add together the earnings paid in between the dates at 4 and 3 (inclusive).

£	
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6. Divide the figure at 5 by the number of whole weeks in the set period. **(Do not round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

£	
---	--

### Employee earns enough

If the amount at 6:

- is at least £87.00 gross a week for babies due between 15 July 2007 and 19 July 2008
- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009.

Go to page 11 for mothers and page 14 for fathers 'When should your employee give you dates for pay and leave?'

### Employee does not earn enough

If from the amount at 6 they do not earn enough:

- mothers - give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate* and give the original back to her
- fathers - give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent* and give the original back to him.

## Does your employee earn enough? *continued*

### Monthly paid - How to work out Average Weekly Earnings

To work out Average Weekly Earnings (AWE) you must:

- convert monthly pay into an average weekly amount
- always use the set period - worked out using the check sheet
- only include earnings from the set period.

#### To work out AWE for employees paid monthly

1. Find the date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby is due. (Use the tables on pages 43 and 44.)

3. Find the date of the last normal pay day on or before that Saturday. **This is the last day of the set period.**

4. Count back to the pay day at least eight weeks from the date at 3 and come forward one day, for example, if the pay day is 22 June, enter 23 June. **This is the first day of the set period.**

5. Add together the earnings paid in between the dates at 4 and 3 (inclusive).

£	<input type="text"/>	<input type="text"/>
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6. Work out how many whole months there are between the dates in 4 and 3 (inclusive). If there is not a whole number of months see 'Working out the number of rounded months when there is not a whole number of months in the set period' on page 25.

7. Divide the figure in 5 by the number of whole months in 6.

£	<input type="text"/>	<input type="text"/>
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8. Multiply the figure in 7 by 12.

£	<input type="text"/>	<input type="text"/>
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9. Divide the figure in 8 by 52. **(Do not round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

£	<input type="text"/>	<input type="text"/>
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### Employee earns enough

If the amount at 9:

- is at least £87.00 gross a week for babies due between 15 July 2007 and 19 July 2008
- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009

go to page 11 for mothers and page 14 for fathers 'When should your employee give you dates for pay and leave?'

### Employee does not earn enough

If from the amount at 9 they do not earn enough:

- mothers - give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate*, and give the original back to her
- fathers - give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to him.

## Does your employee earn enough? *continued*

### Employee paid at irregular intervals

If you pay your employee at irregular intervals because they do not work for you during every pay period, see 'agency workers, supply teachers, seasonal workers or other sporadic employment' see page 12 for mothers and page 15 for fathers.

If you do not pay your employees in a regular pay pattern use the check sheet below for employees paid at irregular intervals to work out their Average Weekly Earnings (AWE).

### Check sheet for employees paid at irregular intervals

#### To work out AWE if you do not pay your employees in a regular pay pattern

1. Find the date baby is due.

	/		/	
--	---	--	---	--

2. Find the date of the Saturday in the 15th week before the week baby due. (Use the tables on pages 43 and 44.)

	/		/	
--	---	--	---	--

3. Find the date of the last pay day on or before that Saturday.  
**This is the last day of the set period.**

	/		/	
--	---	--	---	--

4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example 22 June, enter 23 June.  
**This is the first day of the set period.**

	/		/	
--	---	--	---	--

5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).

£		
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6. Work out the number of days between the dates in 4 and 3 (inclusive).

--

7. Divide the figure in 5 by the number of days in 6.

£		
---	--	--

8. Multiply the figure in 7 by 7.

**(Do not round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

£		
---	--	--

## Does your employee earn enough? *continued*

### Directors

If the director is contractually paid a regular salary calculate their Average Weekly Earnings (AWE) like any other employee; see pages 21 and 22. The director may also be paid a bonus or fees by a formal vote. If so, only include this if it is paid in the set period.

If the director is paid by a formal vote, calculate their AWE using the check sheet below. A formal vote usually takes place at the company's Annual General Meeting and is agreed in the company minutes.

A director who is paid by a formal vote may draw money from the business on a regular basis. Do not include this money when working out the director's AWE.

### Check sheet for directors paid by a formal vote

#### To work out AWE for directors paid by a formal vote

1. Find the date baby is due.

2. Find the date of the Saturday in the 15th week before the week baby due. (Use the tables on pages 43 and 44.)

3. Find the date of the last pay day on or before that Saturday.  
**This is the last day of the set period.**

4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example 22 June, enter 23 June.  
**This is the first day of the set period.**

5. Add together the money voted between the dates in 4 and 3 (inclusive).  
**(Do not include any money drawn in anticipation of the vote.)**

£	
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6. Work out how many whole months there are between the dates in 4 and 3 (inclusive). If there is not a whole number of months see 'Working out the number of rounded months when there is not a whole number of months in the set period' on page 25.

7. Divide the figure in 5 by the number of whole months in 6.

£	
---	--

8. Multiply the figure in 7 by 12.

£	
---	--

9. Divide the figure in 8 by 52.

**(Do not round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

£	
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## Does your employee earn enough? *continued*

### Working out the number of rounded months when there is not a whole number of months in the set period

To calculate Average Weekly Earnings for employees paid monthly, when there are not a whole number of months in the set period that is, between the dates at 4 and 3 of the check sheet on page 22.

When you get to Step 6, work out the number of rounded months as follows.

Count the number of whole months.

For example, if the date at 3 is 19 December, and the date at 4 is 1 October, there are two whole months (1 October to 31 October and 1 November to 30 November).

Count the number of odd days.

For example, if the date at 3 is 19 December, and the date at 4 is 1 October, there are 19 odd days (1 December to 19 December).

Round the number of odd days up or down as shown in 'Rounding rules' below.

Work out the number of rounded months by adding the number in box A to the number in box C.

#### Rounding rules

If the date at 3 is in:

- February - round 14 days or less down and 15 days or more up
- for the other months - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step 6 and follow the rest of the steps in the relevant check sheet.

## Does your employee earn enough? *continued*

### Weekly paid employee gets regular payment earlier or later than normal

This usually happens when you pay a week's wages early because of a holiday.

Follow Steps 1 to 6 of the weekly check sheet on page 21. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

### Weekly paid employee without whole number of weeks in the set earnings period

This usually happens when you have to bring your employee's normal pay day forward because of Bank Holidays at Easter or Christmas.

Follow Steps 1 to 6 of the weekly check sheet on page 21. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

### Agency workers, supply teachers, seasonal workers or other sporadic employment

#### Employees paid in multiples of a week

Use the weekly check sheet on page 21. At Step 6 you must still divide the figure in Step 5 by the number of whole weeks in the set period, even if your employee was not paid for some of the weeks.

#### Employees paid calendar monthly

Use the check sheet on page 22 to work out their Average Weekly Earnings (AWE).

### Change of employer in the set earnings period

If you:

- take over a business between the dates in Steps 5 and 3 (inclusive) of the check sheets on pages 21 and 22, **and**
- have worked out that the mother and father have been employed by you and the previous employer long enough to get Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP), see 'Change of employer' on page 18. You must still add together all their earnings in between the dates in Steps 5 and 3 (inclusive) even where some of them were paid by the previous employer.

### Employees with more than one job

Your employee could have more than one job with you or work for you and another employer.

If all the employee's earnings have to be added together to work out Class 1 National Insurance contributions (NICs) they have to be added together to work out the employee's AWE, and the employee could only get one lot of SMP or SPP.

If Class 1 NICs are worked out separately on the employee's earnings, then you must work out their AWE separately, and the employee can get more than one lot of SMP or SPP.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet CWG2(2008) *Employer Further Guide to PAYE and NICs*.

### Overpayment/underpayment of earnings made during the set period

Where an overpayment or underpayment of wages was made within the set period, it is this overpaid or underpaid amount that must be included in the AWE calculation for deciding if SMP/SPP is due.

This may mean an employee is eligible for SMP/SPP even if their AWE would otherwise have been below the Lower Earnings Level (LEL), or they could be excluded where an underpayment of wages means their AWE fall below the LEL. Adjust any overpayment or underpayment of wages in the normal manner and note your wage records accordingly.

### Salary sacrifice

Some schemes for childcare support provided by you and made available to your employees may be exempt from PAYE tax and Class 1 National Insurance contributions (NICs).

For the purposes of calculating AWE for SMP/SPP the calculation is based on earnings which are subject to NICs. This means that where an employee is taking a salary sacrifice, for example, Childcare Vouchers, their SMP/SPP entitlement will be assessed on their gross earnings that remain after taking off the value of the Childcare Voucher. No NICs are paid on the vouchers. Further information is available on the treatment of PAYE tax and NICs childcare can be found in Employer Helpbook E18(2008) *How to help your employees with childcare*.

## Does your employee earn enough? *continued*

### Earnings in set period where pay rise awarded before or during maternity leave

#### Mothers

You must recalculate SMP Average Weekly Earnings (AWE) to take account of pay rises awarded, or which would have been awarded to a woman had she not been on maternity leave, if:

- you awarded a pay rise on or after 6 April 2005, or before that date had granted a pay rise which had not been put into payment by then, **and**
- the pay rise was effective from anytime between the start of the eight week set period for calculating SMP and the end of the woman's statutory maternity leave. (This is Ordinary Maternity Leave and any Additional Maternity Leave applicable in her case.)

If the effective date of the pay rise falls before the start of the set period but the earnings in the set period at the time SMP was originally calculated had not been adjusted to reflect that pay rise before the end of the set period:

- you must re-calculate her Average Weekly Earnings (AWE) to include the pay rise as though it was effective from the beginning of the set period
- pay any extra Statutory Maternity Pay (SMP) due.

If a pay rise is awarded which on re-calculation means that her earnings are now high enough for her to get SMP when she could not before you should:

- work out 90% of her AWE
- take away the standard rate of SMP
- pay her the difference for six weeks.

If 90% of her AWE is less than the standard rate you may not have to pay her anything.

This is because she may have received the balance of the SMP now due as Maternity Allowance from the Jobcentre Plus or in Northern Ireland the Jobs and Benefits office.

However, not all women are entitled to Maternity Allowance, or the Maternity Allowance she got may have been less than the SMP she is now entitled to. You should therefore ask her to get a letter from the Jobcentre Plus or in Northern Ireland the Jobs and Benefits office to confirm how much Maternity Allowance she received.

If your employee gives you a letter from the Jobcentre Plus office or in Northern Ireland the Jobs and Benefits office showing how much Maternity Allowance she got:

- work out the total amount of SMP she is entitled to
- take away the Maternity Allowance she was paid
- take away any SMP you have already paid her
- pay her the difference.

She should still benefit from a pay rise even if she does not intend to return to work with you after her maternity leave has ended.

If a pay award is made after she has terminated her employment and the pay rise is backdated into a time when she was working for you or was on maternity leave with you, she may be entitled to benefit from the pay rise. You should check the terms of her old contract of employment with you.

If more than one pay rise has been awarded during the above period you will need to perform separate calculations for each.

#### For pay rises awarded prior to 6 April 2005

The amending legislation is not retrospective and therefore there is no general requirement on employers to re-calculate SMP. However, legal advice indicates that employers should be advised to consider a specific claim for arrears of SMP that may be due as a result of pay rises awarded in the past.

If the woman makes such a claim then legal advice is that you should consider recalculating the SMP due where a pay rise was awarded or put into payment before 6 April 2005 but was effective from anytime between the start of the eight week set period for calculating SMP and the end of the woman's statutory maternity leave. (This is ordinary and Additional Maternity Leave applicable in her case.)

The time limit for bringing any claim is six months after the last day a woman was employed in the employment in respect of which the claim is made. Where a claim is made the limitation on any arrears (whether the woman is still employed or has left employment but is within time to claim) is six years from the date the claim is made.

This means you are advised to consider a claim for arrears on the following basis:

- For former employees a claim must be made within six months of their leaving your employment.
- For current employees the SMP must have been paid less than six years before she makes her claim.

However, if the six year point falls within a woman's SMP pay period the woman will also be entitled to a re-calculation (if she can substantiate her claim). But in these cases she will only be entitled to receive any enhanced payments for those weeks within the SMP pay period where less than six years have passed since she made her claim.

The six years should be calculated from the date the woman asks for a re-calculation.

You are of course only obliged to keep SMP records for three years after the end of the tax year to which they refer. Therefore, if a woman makes a claim in respect of a period for which you do not have necessary records, it is reasonable for you to ask her to provide sufficient evidence to substantiate her claim in order to allow you to re-calculate any SMP due. You are of course entitled to recover any arrears of SMP paid on the basis of such requests in the normal way.

Contact the Employer Helpline on **08457 143 143** if you need further advice.

#### Fathers

If his entitlement to SPP is less than the standard rate and he gets a pay rise which is backdated into the set period:

- you must re-calculate his AWE
- pay the extra SPP due.

## Does your employee earn enough? *continued*

### NHS employees

Some NHS employees whose contracts are split between Strategic Health Authorities and NHS Trusts, as a result of NHS re-organisation, can choose to have all their earnings added together for working out AWE for SMP and SPP purposes.

For further information contact the Employer Helpline on **08457 143 143**.

### Employee does not qualify and some of their earnings are included in a PAYE Settlement Agreement

If your employee has Average Weekly Earnings (AWE) of less than:

- £87.00 for babies due between 15 July 2007 and 19 July 2008
- £90.00 for babies due between 20 July 2008 and 18 July 2009

and they received any expense payments or benefits in kind in the set period, which were included in a PAYE Settlement Agreement you may need to re-calculate their AWE.

If any of these expense payments and benefits in kind would have been liable for Class 1 NICs if they had not been included in the PAYE Settlement Agreement, **you must include** these expense payments and benefits in kind and **re-calculate** your employee's AWE.

PAYE Settlement Agreements are a more flexible way of dealing with some expense payments and benefits in kind. Earnings included in a PAYE Settlement Agreement are liable for Class 1B NICs.

For more information on PAYE Settlement Agreements and whether something is liable for Class 1 NICs, see the CWG2(2008) *Employer Further Guide to PAYE and NICs*.

### Some of the employee's earnings are included in a PAYE Settlement Agreement and SMP is re-calculated to take account of a pay rise

If you had to re-calculate your employee's earnings because they did not qualify and:

- some of their earnings were included in a PAYE Settlement Agreement, **and**
- they then get a pay rise which means you have to work out your employee's SMP again. You must re-calculate their AWE see the following paragraph.

If they do not intend to return to work after the birth they may still be entitled to benefit from the pay rise. You should check the terms of their old contract of employment with you.

### Re-calculating your employee's Average Weekly Earnings (AWE)

#### Step 1

Re-calculate their AWE using the earnings paid in the set period as increased by the pay rise. Do not include any PAYE Settlement Agreement expense payments and benefits in kind at this stage.

If the new AWE amount is at least:

- £87.00 for babies due between 15 July 2007 and 19 July 2008
- £90.00 for babies due between 20 July 2008 and 18 July 2009

your employee's earnings are high enough to get SMP/SPP. So:

- work out the total amount of SMP/SPP they are now entitled to
- take away any SMP/SPP you have already paid them
- pay any extra SMP/SPP due.

Your employee may not be entitled to any extra SMP/SPP because their AWE with the pay rise, excluding the PAYE Settlement Agreement earnings, are less than their original earnings. If this is the case, do nothing, your employee may continue to receive the SMP as originally calculated.

If the new AWE are less than the LEL go to Step 2.

#### Step 2

Re-calculate their AWE using the earnings paid in the set period as increased by the pay rise and include the expense payments and benefits in kind.

If the new AWE amount is at least:

- £87.00 for babies due between 15 July 2007 and 19 July 2008 your employee's earnings are high enough to get SMP/SPP
- £90.00 for babies due between 20 July 2008 and 18 July 2009.

So:

- work out the total amount of SMP/SPP they are now entitled to
- take away any SMP/SPP you have already paid them
- pay any extra SMP/SPP due.

If the new AWE are less than the LEL shown above they still cannot get SMP/SPP.

- Mothers - give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate*, and give the original back to her.
- Fathers - give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to him.

## Further conditions for MOTHERS

### Baby born in or before the 15th week before baby due date

If the baby is born in or before the 15th week before the week baby due date, there are special rules for all four of the terms and conditions.

The mother has to:

- give you medical evidence of the date the baby is due
- have been continuously employed by you for the required period
- have AWE high enough in the set period
- give you acceptable notice for start of SMP.

#### Evidence - Mothers

Your employee should give you medical evidence of the date the baby was expected to be born as well as the actual date of birth.

This is usually the form MAT B1 *Maternity Certificate*. But you can accept any document signed by a doctor or midwife as long as a date or expected date is provided. You can also accept a birth certificate as evidence of the date of birth.

Your employee should give you the evidence within 21 days after the date of birth, or as soon as she can if this is not possible.

#### Continuous employment rule

If the baby is born before or during the 15th week before the week baby due, the continuous employment rule is satisfied if she would have completed 26 weeks continuous employment with you had it not been for the baby's early birth.

#### Does your employee earn enough?

If your employee has earnings, which vary from week to week, you must work out her AWE. This is because you must pay her 90% of the average weekly amount for the first six weeks. Use the weekly check sheet on page 21 or the monthly check sheet on page 22 but change Steps 1 and 2, as shown on this page.

#### Amendments to weekly and monthly check sheets on pages 21 and 22.

##### Step 1

Enter the baby's date of birth.

##### Step 2

Find the date of the Saturday before the date of birth.

Follow the rest of the steps.

When you decide whether your employee earns enough or not, compare the amount in 6 (weekly) or 9 (monthly) with the amounts shown on pages 21 and 22. The total AWE should be compared to the LEL on the Saturday before the actual date of birth.

#### When should your employees give you dates for pay and periods of leave?

The mother will not have been able to give you advance notice, but she must tell you the date of birth as soon as possible.

You should confirm when you expect her back, see sample letter on page 19 or on the Employer CD-ROM. If she does not choose to take her full leave entitlement she must give you eight weeks notice of when she intends to start work again.

#### Start of leave and payment

Maternity leave and the SMP pay period start on the day after the date of birth. Your employee must give you evidence of the date of birth and the date the baby was due.

### Baby born before intended start of SMP and leave

If the baby is born before the date the mother intended to start her SMP and leave, there are special rules for when your employee needs to give you evidence and when you start to pay. All the other terms and conditions apply, see page 11.

#### Evidence

Your employee should give you medical evidence of the date the baby was due and the date of birth. This is usually the form MAT B1 *Maternity Certificate*. You can accept a birth certificate as evidence of the date of birth.

Your employee should give you the evidence within 21 days after the date of birth, or as soon as she can if this is not possible.

#### Start of leave and payment

The maternity leave and SMP pay period starts on the day after the date of birth.

### Employee leaves job after the start of the 15th week before week baby due

Your employee cannot get maternity leave if they have left their job but may still qualify for pay.

**It does not matter why she left or that she is not coming back - she is entitled to Statutory Maternity Pay (SMP) if she satisfies the qualifying conditions.**

If your employee starts work for a new employer before her baby is born, you are still liable to pay SMP.

There are special rules for when you start to pay. Find the date of the Sunday of the 11th week before the week baby due using the tables on pages 43 and 44.

If she leaves before that date the SMP pay period starts on the Sunday of the 11th week before the week baby due unless the baby is born before then, in which case, the SMP pay period will start the day after the date the baby is born.

If she leaves her employment after the start of the 11th week, and before any other event which may trigger her pay, then the SMP pay period starts the day following the day on which she left her employment.

## Further conditions for **MOTHERS** *continued*

### Stillbirth

If the baby is stillborn:

- before the 25th week of pregnancy SMP/SPP is not payable and there is no entitlement to maternity or paternity leave. To apply this rule you should treat the 16th week before the week baby due date as being the 25th week of pregnancy.
- in or after the 25th week of pregnancy but
  - more than 15 weeks before the due date, see the paragraph 'Baby born in or before 15th week before baby due date' on page 29
  - before the mother intended to start her SMP and leave, see the above paragraph headed 'Baby born before intended start of SMP and leave'
  - after the mother has started her SMP and leave

you should continue to pay SMP.

The father is entitled to SPP and paternity leave if the baby is stillborn in or after the 25th week of pregnancy see the paragraph headed 'Baby born before intended start of SMP and leave' on page 29.

If a baby is born alive but later dies pay SMP and SPP as for a live birth. This is the case even if the child survives only for an instant. It is a live birth and you should apply the rules for a live birth.

### Pregnancy related absence

If the mother is absent from work because of her pregnancy and the absence continues into or starts within the four week period starting on the Sunday of the 4th week before the week baby due, see the tables on pages 43 and 44, there are special rules for when her leave starts and when you start to pay.

The SMP pay period and her maternity leave start on the day after the first complete day of absence from work because of her pregnancy within the four week period. This may mean that you have to pay a mixture of wages and SMP at the beginning or end of the period.

If you are not sure whether the employee's absence is caused by her pregnancy contact your local HM Revenue & Customs office or the Employer Helpline for advice.

## Further conditions for FATHERS

### When should your employee give you dates for pay and leave?

The father will not have been able to give you advance notice, but he must tell you the date of birth as soon as possible.

He must still tell you when he wants to take his leave and pay and whether he wants to take one or two consecutive whole weeks off.

He can choose to take his leave any time between the actual date of birth and the end of an eight week period running from the Sunday of the week the baby was originally due. See the tables on pages 43 and 44 to find the Sunday of the week the baby was originally due.

#### Evidence

Your employee should give his declaration of family commitment, confirm the date the baby was due and the date of birth on form SC3 *Becoming a parent*. You do not need a birth certificate or evidence of pregnancy.

#### Start of leave and payment

The SPP pay period always starts the day after the last day your employee worked before starting their paternity leave. Your employee must tell you when he wants to stop work, see above.

All the other rules on payment apply.

### Baby born before intended start of leave

If the baby is born **before the date the father intended to start his leave** there are special rules for when your employee needs to give you evidence and when you start to pay.

All the other terms and conditions apply.

#### Evidence

Your employee should give you his declaration of family commitment, confirm the date the baby was due and the date of birth on form SC3 *Becoming a parent*. You do not need a birth certificate or evidence of pregnancy.

Your employee should give you the evidence as soon as he can.

#### Start of leave and payment

The SPP pay period always starts the day after the last day your employee worked before starting their paternity leave. Your employee must tell you when he wants to stop work.

He can choose to take his leave any time between the actual date of birth and the end of an eight week period running from the Sunday of the week the baby was originally due. See the tables on pages 43 and 44 for the Sunday of the week the baby was originally due.

Your employee cannot get paternity leave if they have left their job but may still qualify for pay, if they left after the baby was born.

All the other rules on payment apply.

#### FATHERS who leave before or during paternity leave

If the father stops work before the date of birth he is not entitled to Statutory Paternity Pay (SPP).

If the father stops work after the date of birth, it does not matter why he left or that he is not coming back - he is entitled to SPP as long as he does not start work for a new employer during the SPP period.

The SPP pay period starts the day after the last day your employee worked. Your employee must have told you whether he wanted one or two weeks pay.

If the employment ends after the baby has been born but before the planned start of the SPP period, it is simplest to treat the SPP period as beginning on the day after the last day of employment. As the employee may choose when to begin their SPP period you may wish to confirm when they wish to start prior to them leaving your employment. But, if they leave to start work for another employer, they are not entitled to SPP from you if they worked for the new employer during the SPP period.

## Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP)

### Baby born in or before the 15th week before baby due date

If the baby is born in or before the 15th week before the baby due date, there are special rules for all four of the terms and conditions, and for when you start to pay. (A table showing the 15th week dates is on pages 43 and 44.)

If the mother does not meet any of these terms and conditions she is not entitled to SMP and you must give her form SMP1 *Why I cannot pay you SMP*.

If the father does not meet any of these terms and conditions he is not entitled to SPP and you must give him form SPP1 *Why I cannot pay you SPP*.

#### Has your employee worked for you long enough?

A mother will get maternity leave no matter how long she has worked for you. For qualifying conditions on pay see page 29.

Use the three steps below to check whether a father has worked for you long enough to qualify for SPP and paternity leave.

#### Step 1

Find the date the baby was due in the tables on pages 43 and 44.

#### Step 2

Read across to the latest start date for employment with you. If they started work after that date they do not qualify.

#### Step 3

If they started work before the latest start date, read across to the start of the 15th week before the week baby due. If they would still have been employed by you at that date, then they qualify.

#### Breaks in employment

If either the mother or father have had breaks in the time you have employed them which may affect whether they have worked long enough to qualify for pay and leave:

- count part weeks of employment as full weeks
- check pages 17 and 18, to see if you can ignore the breaks.

#### Tax and NICs on SMP/SPP paid after the employee has left work

For more information about deducting tax and National Insurance contributions and when to issue form P45, see booklet CWG2(2008) *Employers Further Guide to PAYE and NICs*.

### Start of payment

SMP and SPP are weekly payments. They should be paid on the employee's next usual pay day on or after the last day of their pay week. SMP and SPP can be paid as part weeks to help you align the payments to their employees normal pay period.

SMP pay weeks start with the first day of the pay period, so that, for example, a SMP pay period which starts on a Wednesday will have pay weeks within the pay period which run from Wednesday to the following Tuesday.

The SMP pay period starts on the day the woman wants it to start and it is intended that this date will be the same day as her maternity leave starts. Both pay and leave might start earlier if:

- the baby is born more than 15 weeks before the due date, see page 29
- the baby is born before the intended start date of leave, see page 29
- your employee has a pregnancy related absence, see page 30.

The SPP pay period starts the day after the last day your employee worked before starting their paternity leave. Your employee will have told you when he planned to stop work, see page 14.

SMP and SPP should be paid in the same way as you would pay earnings for the same period. All the usual deductions apply, including PAYE tax and National Insurance contributions, except Attachment of Earnings Orders or Deductions of Earnings Orders for Child Maintenance and Enforcement Commission (Arrestment of Earnings Orders in Scotland).

### SMP/SPP paid part-weekly

SMP can be paid as part weeks to help employers align the payments to their employees normal pay period. The weekly rate may be split into two and if it is, the calculation is done on the basis of dividing the weekly rate by seven. For example, if the pay period covers the end of one month and the beginning of the next (two days in April and five days in May) then pay two-sevenths in one month and five-sevenths the next month.

This part payment may also apply to the payment of SPP for the one or two weeks it is paid.

### Employee is not returning to work

If your employee is not returning to work you **must** still pay them SMP or SPP.

**You cannot ask them to repay it.**

### Stopping payment

#### SMP

Stops after 39 weeks. However, there are circumstances where it might stop earlier. These are detailed later in the Helpbook.

#### SPP

- Stops after one or two weeks - as chosen by your employee.
- Cannot be paid for any days later than the 56th day after the baby is born or, if the baby is born early, later than the 56th day after the Sunday of the week the baby was due.

## Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

### Employee works for you during the pay period

A woman can work for you under her contract of service and during her SMP pay period for up to 10 days without losing her SMP for the week in which that work is done. These 10 days are called 'Keeping in Touch' (KIT) days and enable your employee to undertake the odd days training or do some work for you on occasion to keep in touch during her maternity leave without losing her SMP or ending her maternity leave.

The KIT days may be used consecutively, singly or in blocks, it is for you and your employee to agree how they should be used if your employee wishes to do some work. But any work on any day (even as little as an hour) will count as a whole KIT day.

This provision is designed to help ease a woman's eventual return to work and to make it easier for her to keep in touch with her employer during her leave from work.

#### KIT days example

If a woman works Monday to Friday, the SMP pay period is 5 March 2008 to 2 December 2008, and the SMP pay week is Wednesday to Thursday.

If a woman returns to work for six days:

- Monday to Wednesday, 1 September 2008 to 3 September 2008, **or**
- Monday to Wednesday, 8 September 2008 to 10 September 2008.

The SMP pay weeks for this period are:

- 27 August 2008 to 2 September 2008 (two KIT days)
- 3 September 2008 to 9 September 2008 (three KIT days)
- 10 September 2008 to 16 September 2008 (one KIT day).

She then works for five days Monday to Friday 27 October 2008 to 31 October 2008.

The SMP pay weeks for this period are:

- 22 October 2008 to 28 October 2008 (two KIT days)
- 29 October 2008 to 4 November 2008 (two KIT days, one non-KIT day).

SMP is payable for all of the above SMP pay weeks except for the pay week 29 October 2008 to 4 November 2008 because in this week the woman has exceeded her 10 KIT days.

She has used her total of 10 KIT days so for any further work done SMP will not be payable for any SMP weeks.

Both the employee and the employer must agree that these days may be worked and the arrangements including what work she will be doing and how much she will be paid.

The amount of pay she receives for work done is something for you to agree with your employee but the minimum you must pay is the SMP rate the woman is entitled to for that SMP pay week.

The employer has no right to demand that such KIT work is undertaken and the woman has no right to undertake such work.

If your employee does more than 10 days work for you in her SMP pay period you cannot pay SMP to her for any week in which she does such work. To be clear, if a week in the SMP pay period contains only KIT days, SMP should be paid. If a week in the SMP pay period contains the last of the KIT days and also another day or days of work for you, or she has used up all her KIT days, you **must not** pay SMP for each week in which such work is done.

Once your employee has used her 10 KIT days, she will lose one week's SMP for each week or part week she works for you. The SMP pay period is not extended to take account of any such weeks. Any SMP lost in this way is always at the standard rate first.

### Employee works for another employer during the pay period

#### Mother

If your employee works for another employer during the SMP pay period but before the baby is born carry on paying SMP. She is responsible for telling you if she starts or goes back to work for someone else after the baby is born.

#### All employees

If your employee works for another employer during the SMP or SPP pay period after the baby is born, you need to check whether they were employed by that employer during the 15th week before the week baby due. A table showing these dates is on pages 43 and 44.

It is up to your employee to tell you that they are working for another employer.

If your employee is working for someone who employed them in the 15th week before the week baby due, you should continue to pay them SMP/SPP as normal.

If your employee is working for someone who did not employ them in the 15th week before the week baby due, you must stop paying SMP/SPP from the start of the week they work for that employer. Your liability to pay SMP/SPP ends completely on the last day of the week SMP/SPP was paid before they started work.

- **Mothers** - give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate*, and send the original back to her.
- **Fathers** - give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and send the original back to him.

## Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

### Employee is taken into legal custody during the pay period

You cannot pay SMP/SPP for any SMP or SPP pay week your employee is in legal custody or for any week in the pay period after that.

- **Mothers** - give her form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MAT B1 *Maternity Certificate*, and give the original back to her.
- **Fathers** - give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to him.

It is your employee's responsibility to tell you if they are taken into legal custody. Your employee is in legal custody if they are detained. They are not in legal custody if they are:

- voluntarily helping police with their enquiries
- out on bail
- serving a suspended sentence.

### Employee is sick during the pay period

#### Mothers

If the mother becomes sick during the SMP pay period do not pay her Statutory Sick Pay (SSP) but continue to pay her SMP as normal.

You may need to think about topping up her SMP with occupational sick pay.

#### Fathers

If the father becomes sick during the SPP pay period you must check whether he is entitled to SSP or not, see the Employer Helpbook, E14 *What to do if your employee is sick*.

You cannot pay him SPP for any week in which he is entitled to be paid SSP. Give him form SPP1 *Why I cannot pay you SPP*. Take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to him. Bear in mind that:

- SPP weeks can start on any day of the week
- your employee will not normally be entitled to be paid SSP from the very first day he is incapable of work.

### Employee dies during the pay period

If your employee dies during the SMP or SPP pay period, you should pay SMP/SPP for the week in which they die, but not for any week in the pay period after that.

### The baby dies during the pay period

If the baby dies during the SMP or SPP pay period, payment should continue as normal.

### You become insolvent during the pay period

If you become insolvent during the SMP or SPP pay period, HM Revenue & Customs will pay your employee's SMP/SPP from the date of the insolvency.

You should tell your employees to contact their local HM Revenue & Customs office.

It will help if you or the liquidator can let us know which of your employees are affected so we can pay them as soon as possible.

### Paying through an agent

You can arrange for the SMP/SPP to be paid through an insurance company, friendly society, payroll service or other third party. However, bear in mind that you, as the employer, are responsible for making sure that it is paid according to the rules.

### Non-cash payments

You may normally pay some or all of your employee's earnings as a non-cash payment, for example, providing board and lodging or giving them goods or services.

However, you must pay any SMP/SPP in full, in cash. Your employee's contract should state whether they can continue to get non-cash benefits, like a company car or mobile phone while they are on maternity or paternity leave. Even if the contract does not specify it, your employee is probably entitled to these benefits during ordinary and Additional Maternity or Paternity Leave.

For more information please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or seek independent legal advice.

### Employee has more than one employer

If your employee has more than one employer they can get SMP/SPP from each employer if they satisfy all the qualifying conditions. They can choose to take different time off from each employer.

### Employee has more than one job with you

If your employee has more than one job with you, you should work out whether they can get more than one payment of SMP/SPP from you, when you were looking at whether their earnings were high enough, see page 26.

If they can only get one payment of SMP/SPP from you, they should take the same time off from each job otherwise they will lose some of their SMP/SPP because they are working for you.

If they are entitled to more than one payment of SMP/SPP from you they can choose to take different time off from each job without losing their entitlement to SMP/SPP.

## Paying Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

### Lump sums

You can pay your employee their SMP/SPP in a lump sum, but we do not recommend it in case something changes during their SMP/SPP pay period.

If you do decide to pay the SMP/SPP as a lump sum, you and your employee could pay more National Insurance contributions (NICs) than if you paid it on their normal pay day. See Employer Helpbook E13(2008) *Day-to-day payroll*, for more information on working out NICs.

### Payment of maternity or paternity pay under an employee's contract of employment

If you pay maternity or paternity pay under an employee's contract of employment and they can also get SMP/SPP you need to consider what you must pay your employee for each week in the pay period.

#### Mothers

You must pay your employee at least the SMP they are entitled to for any week in the pay period.

Whatever you pay your employee, you must still work out how much SMP your employee was entitled to and keep the relevant records, see page 40.

If your employee is also entitled to maternity pay under their contract and this is:

- the same as or more than the SMP for any week in the pay period, then you must pay at least the maternity pay under their contract. The SMP they are entitled to is offset against the maternity pay under their contract
- less than the SMP for any week in the pay period, then you must pay at least the SMP.

The maternity pay they are entitled to under their contract can be offset against the SMP. If you have set up a scheme to pay your employees maternity pay and your employees pay all the contributions into that scheme, you must pay them the SMP on top of the maternity pay they can get under the scheme.

If you have set up a scheme to pay your employees maternity pay and you and your employees share paying the contributions into that scheme, you must:

- make sure that the proportion of the maternity pay they can get under the scheme which is based on your contributions is more than the SMP, **or**
- pay them money on top of the maternity pay they can get under the scheme, so that the extra money and the proportion of the maternity pay they can get under the scheme which is based on your contributions is at least the same as the SMP.

#### Fathers

If you pay paternity pay under an employee's contract of employment and they can also get SPP you need to consider what you must pay your employee during the one or two week SPP pay period.

You must pay your employee at least the amount of SPP they are entitled to. Whatever you pay your employee, you must still work out how much SPP your employee was entitled to and keep the relevant records.

If your employee is also entitled to paternity pay under their contract you must pay at least the paternity pay they are entitled to under their contract if:

- your employee has chosen or can only get one weeks SPP, **and**
- the paternity pay under their contract is for one week or less, **and**
- it is the same as or more than the SPP, **or**
- your employee has chosen to get two week's SPP, **and**
- the paternity pay under their contract is for two weeks or less, **and**
- it is the same as or more than the SPP.

You must pay at least the SPP they are entitled to if:

- your employee has chosen to get one weeks SPP, **and**
- the paternity pay under their contract is for one week or less, **and**
- it is less than the SPP, **or**
- your employee has chosen to get two week's SPP, **and**
- the paternity pay under their contract is for two weeks or less, **and**
- it is less than the SPP.

The SPP they are entitled to and paternity pay they are entitled to under their contract are offset against each other.

### Employee works abroad

#### Leave

Employees who work outside the UK may be entitled to maternity or paternity leave under UK law. The law in this area is complex. For more information please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or seek independent legal advice. If there is a dispute an employment tribunal will need to decide the issue.

# Your employee disagrees with your decision on their Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) entitlement

## Written statement

If you decide not to pay SMP/SPP, for whatever reason, you should explain your decision to your employee.

If they do not agree, they have the right to ask for a written statement from you about:

- which weeks, if any, in the period that you regard SMP/SPP is payable for,
- how much SMP/SPP you consider your employee is entitled to,
- why you do not regard yourself as liable to pay SMP/SPP for other weeks in the period.

An employee can ask for a written statement at any time, and if the request is reasonable you must supply the statement within reasonable time, for example, within seven days of the request.

## Formal decisions about SMP/SPP entitlement

If your employee does not agree with your decision about their SMP/SPP entitlement, they can ask HM Revenue & Customs to make a formal decision. An officer of HM Revenue & Customs can also ask for a formal decision on entitlement.

HM Revenue & Customs is the first of the authorities who decide questions on entitlement to SMP/SPP. In practice, such decisions are given judicially by authorised officers of HM Revenue & Customs. Their decisions are given strictly in accordance with the facts and the law.

Before asking for a formal decision from HM Revenue & Customs, your employee will be expected to have asked you for a written statement about their SMP/SPP position. Perhaps they will also have discussed the problem with you.

Both you and your employee will be asked for observations in writing. Neither of you will be asked to appear before the officer making the decision. You can both give supporting evidence. In the event of an appeal, your evidence will be copied to your employee and vice versa.

The officer making the decision will send the formal decision to both of you. If the decision is that your employee is entitled to SMP/SPP, the decision will give the time limit by which you must pay the SMP/SPP. You will be given full details of your appeal rights with the notice decision.

If either of you appeals, HM Revenue & Customs will notify the other party. If you appeal, the officer making the decision will try to discuss the case with you so that the appeal can be decided by agreement between you, the officer and your employee.

Any agreement reached about the payment or otherwise of SMP/SPP must comply with the appropriate legislation at the hearing.

If all parties are unable to agree, Tax Commissioners will consider the appeal. You both have the right to appear in person and/or be represented at the hearing.

Commissioner's decisions are final, except that you can appeal on a point of law, with leave, to the Court of Appeal, or in Scotland, to the Court of Session or in Northern Ireland the Court of Appeal (NI).

If new facts come to light which affect the decision, the decision will be reviewed and, if appropriate, a revised decision will be issued. There are new appeal rights against this decision. It is in everyone's interest to put all the facts before the officer making the decision in the first place.

# Recovering Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP)

## How much do I get back?

The amount you get back normally depends on your total gross, employers' plus employees', Class 1 National Insurance contributions in the appropriate tax year. You can use your form P35 Employer Annual Return, as a quick check of this.

If your annual liability for Class 1 National Insurance contributions is **£45,000.00 or less** you are entitled to:

- 100% of the Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP), **and**
- an additional amount as compensation for the NICs you pay on the SMP/SPP. The compensation rate for 2008-09 is 4.5%.

Add together all payments of SMP/SPP made in the same tax months for which you are entitled to recover and calculate 100% plus 4.5% of that total figure.

If your annual liability for Class 1 National Insurance contributions is **more than £45,000.00** you are entitled to 92% of the SMP/SPP.

Add together all payments of SMP/SPP made in the same tax months for which you are entitled to recover and calculate 92% of that total figure.

If you only had part-year or no annual liability for Class 1 National Insurance contributions for the previous tax year and this could be **either more or less than £45,000.00**. You will need to check whether it is £45,000.00, more than £45,000.00 or less than £45,000.00.

- For babies due between 22 July 2007 and 19 July 2008, check your liability for 2006-07.
- For babies due between 20 July 2008 and 25 July 2009, check liability for 2007-08.

## Where does the money come from?

Use the money you have to pay over to HM Revenue & Customs:

- PAYE tax
- National Insurance contributions
- Student Loan deductions
- Construction Industry Scheme deductions.

You may also need to use this money to pay other statutory payments. Please make sure you have enough to cover all the payments you have to make, use the quick check below.

## I was not an employer for the whole of 2006-07 and 2007-08

Check which tax year you need to look at depending on the baby's due date:

- for babies due between 22 July 2007 and 19 July 2008, check your liability for 2006-07
- for babies due between 20 July 2008 and 25 July 2009, check your liability for 2007-08.

If you were an employer for the whole of that tax year and your annual liability for Class 1 National Insurance contribution (NICs) is £45,000.00 or less you are entitled to:

- 100% of the SMP/SPP, **and**
- 4.5% as compensation for the NICs you pay on SMP/SPP.

If you were an employer for the whole of that tax year and your annual liability for Class 1 NICs is more than £45,000.00 you are entitled to 92% of the SMP/SPP.

## Check sheet - if you were not an employer for the whole of 2006-07 and 2007-08

1. Add together your total Class 1 NICs for the tax months in that year.

£	
---	--

2. Work out the number of tax months you were an employer in that year. Count part months as whole months and remember that tax months run from the 6th of one month to the 5th of the following month.

--

3. Divide the figure in 1 by the figure in 2.

£	
---	--

4. Multiply the figure in 3 by 12.

£	
---	--

If the figure in 4 is £45,000.00 or less you are entitled to:

- 100% of the SMP/SPP, **and**
- 4.5% as compensation for the NICs you pay on the SMP/SPP.

If the figure in 4 is more than £45,000.00 you are entitled to 92% of the SMP/SPP.

# Recovering Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

## Check sheet - if you were not an employer at all in that tax year

1. Find the date baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Sunday in the 15th week before the week baby due. (Use the tables on pages 43 and 44.)	<input type="text" value="/ /"/>
3. Identify the tax year in which the Sunday in the 15th week before the week the baby due falls.	<input type="text"/>
4. Identify the tax month before the Sunday in the 15th week before the week the baby is due. Remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs, and the tax month you identified at 4, inclusive.	<input type="text" value="£"/> <input type="text"/>
6. Work out the number of tax months between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs and the tax month you identified at 4, inclusive.	<input type="text"/>
7. Divide the figure in 5 by the number of months in 6.	<input type="text" value="£"/> <input type="text"/>
8. Multiply the figure in 7 by 12.	<input type="text" value="£"/> <input type="text"/>
If the figure in 8 is £45,000.00 or less you are entitled to:	
<ul style="list-style-type: none"><li>• 100% of the SMP/SPP, and</li><li>• 4.5% as compensation for the NICs you pay on the SMP/SPP.</li></ul>	
If the figure in 8 is more than £45,000.00 you are entitled to 92% of the SMP/SPP.	

## Recovering Statutory Maternity Pay (SMP)/Statutory Paternity Pay (SPP) *continued*

### Advance funding from your Accounts Office

If you need to get the SMP/SPP back quickly or you do not have enough money from the deductions of PAYE and NICs to pay out all the Statutory Payments you are liable to pay to your employees, you can apply to your Accounts Office for payment. You can do this where, for example, the amount of money you need to pay out exceeds the amount you will have available for the same tax month or quarter.

You can ask your Accounts Office to pay you the balance of what you need to pay out up to the amount you would be entitled to recover. You can apply online at <http://www.hmrc.gov.uk/employers/statpayments-recovery.htm> You should tell them the information set out in the quick check box below and ask for advance funding.

### Recovery of SMP/SPP paid in a previous tax year

If you need to recover SMP/SPP for payments made in a previous tax year, you cannot claim this from your Accounts Office.

You should complete form SP32 to get the money back. You can print these forms from the Employer CD-ROM or go to [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers) They can be obtained from your local HM Revenue & Customs office or from the Employer Orderline on **08457 646 646**.

Send the completed form SP32 to:

HM Revenue & Customs  
National Insurance Contributions Office  
Employers Teams 1 & 2  
Refunds Group Contributor Group  
Room BP1001  
Benton Park View  
Newcastle Upon Tyne  
NE98 1ZZ.

### A quick check to see if you need advance funding

Total amount of Statutory Maternity Pay (SMP)/  
Statutory Paternity Pay (SPP)/Statutory Adoption  
Pay (SAP) and Statutory Sick Pay (SSP) you can get back

A £

PAYE tax

B £

National Insurance contributions  
(including those on SMP/SPP)

C £

Student Loan deductions

D £

Construction Industry Scheme deductions

E £

Total amount you will have available in the same tax month  
or quarter (total of boxes B + C + D + E) =

F £

**If F is less than A write to your Accounts Office to ask for an advance of the difference.**  
If you need any help call the Employer Helpline on **08457 143 143**.

## Keeping records

You must keep all records for at least three years after the end of the tax year to which they relate.

### Statutory Maternity Pay (SMP)

You must keep:

- the medical evidence of the pregnancy, form MAT B1 *Maternity Certificate* or other similar evidence, or a copy if you gave it back to your employee with form SMP1 *Why I cannot pay you SMP*
- a record of the payment dates and the amount paid
- the date the pay period began
- a record of any weeks in the 39 week period when SMP wasn't paid, with reasons
- form *SMP2 Record Sheet*, is available on the Employer CD-ROM or from the Orderline **08457 646 646** to help you keep a record of your payments.

### Statutory Paternity Pay (SPP)

You must keep:

- the declaration of family commitment or a copy if you gave it back to your employee with form SPP1 *Why I cannot pay you SPP*
- a record of the payment dates and the amounts paid
- the date the pay period began
- a record of any unpaid SPP with reasons
- form *SPP2 Record Sheet*, is available on the Employer CD-ROM or from the Orderline **08457 646 646** to help you keep a record of your payments.

### Form P11 (or substitute)

Record payments on your employees form P11 *Deductions Working Sheet* or computerised equivalent, for each week or month that you pay SMP/SPP to your employee and also make a recovery. Complete column 1g or 1h of your P11 and include SMP/SPP in the gross pay in column 2.

### Form P12 (Simplified Deduction Scheme)

If you operate the Simplified Deduction Scheme, and are recovering some, or all, of the SMP/SPP you have paid, record all payments on your employee's form P12 *Deductions Working Sheet*.

Record Statutory Payments made weekly or monthly on your employee's form P12 *Deductions Working Sheet*, or computerised equivalent. At the end of the tax year send the completed P12 and P37 (which shows the number of Deduction Working Sheets enclosed, and is signed and dated by you) to the HM Revenue & Customs office that deals with your PAYE.

### Form P14 (or substitute)

At the end of the tax year you need only record on form P14 or computerised equivalent, all SMP/SPP paid to each employee for all tax months where you recovered some, or all, of the SMP/SPP. If it is easier for you to record all SMP/SPP paid in all tax months, instead of just in the tax months where you made a recovery, you can choose to do that.

### Form P35 (Employer Annual Return)

On your P35 *Employer Annual Return*, or computerised equivalent, enter the total amount of SMP/SPP you have recovered during the tax year. If you have received any payment from HM Revenue & Customs enter the amount of funding you have received. You need only record the amount of SMP/SPP recovered and any amount of NICs compensation on form P35.

For more information about internet filing go to [www.hmrc.gov.uk/payrollsoftware](http://www.hmrc.gov.uk/payrollsoftware)

## Keeping records *continued*

### Recording SMP or SPP payments and/or recovery covering more than one tax year

Where payments and/or recovery of SMP or SPP start in one tax year and end in a later tax year, you should only record payments and/or recovery that relates to that tax year on your End of Year records. This is to ensure that your records balance with those held by your Accounts Office.

Payments and/or recovery of SMP or SPP relating to the later tax year should be shown on your End of Year records for that tax year.

You cannot make a recovery in one tax year that relates to SMP/SPP payments made in a previous tax year. For information about how to recover payments made in a previous tax year see page 39.

### Recording Advance Payments

Where an advance payment has been received and it is for a period spanning more than one tax year, you should only record the amount of the advance and the payment(s) that it relates to for that tax year on your End of Year records. This is to ensure that your records balance with those held by your Accounts Office.

Any advance payment that relates to the later tax year should be recorded on the End of Year records for that tax year.

Where a request has been made for an advance of payment that covers two tax years, the Accounts Office will only make the advance for the current tax year and pay the balance for the following tax year after 5 April.

### Incorrect payment of SMP/SPP

If you make an incorrect payment of SMP/SPP in the current year, you must:

- put it right
- correct your records, payments and deductions from money due to your Accounts Office.

If you have issued form SMP1/SPP1, tell the nearest Jobcentre Plus or in Northern Ireland the Jobs and Benefits office, as it may affect your employee's right to claim social security benefit.

Remember an incorrect payment in one period of maternity/paternity may affect a later one.

If you find you have made an incorrect payment in an earlier tax year, you must contact your local HM Revenue & Customs office, they will tell you what to do to correct it.

See CWG2(2008) *Employer Further Guide to PAYE and NICs*, for information on how to correct errors in recording NICs.

Any wrongly paid SMP/SPP may be recovered from your employee and you should treat this as you would an underpayment/overpayment of wages or salary, and should be recorded as wages or salary not SMP/SPP.

## A list of countries in the European Economic Area (EEA)

Countries within the EEA are:

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark, excluding Faroe Islands
- Estonia
- Finland
- France, including Guadeloupe, Martinique, Guiana, Reunion, Corsica and Saint-Pierre et Miquelon
- Germany
- Gibraltar
- Greece, including Macedonia, Thrace, Epirus, Thessaly, Continental Greece, the Peloponese, the Dodecanese, the Cyclades, the Ionian Islands, the Aegean Islands and Crete
- Hungary
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands, The
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland
- UK, including Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

## A complete set of tables showing important dates for Statutory Maternity Pay and Statutory Paternity Pay and maternity/paternity leave

Baby due between 6 April 2008 and 1 November 2008						
Week baby due		Start of 15th week before the week baby due		Latest start date for employment with you	Start of 11th week before the week baby due	Start of 4th week before the week baby due
Sunday	Saturday	Sunday	Saturday	Saturday	Sunday	Sunday
06/04/08	to 12/04/08	23/12/07	to 29/12/07	07/07/07	20/01/08	09/03/08
13/04/08	to 19/04/08	30/12/07	to 05/01/08	14/07/07	27/01/08	16/03/08
20/04/08	to 26/04/08	06/01/08	to 12/01/08	21/07/07	03/02/08	23/03/08
27/04/08	to 03/05/08	13/01/08	to 19/01/08	28/07/07	10/02/08	30/03/08
04/05/08	to 10/05/08	20/01/08	to 26/01/08	04/08/07	17/02/08	06/04/08
11/05/08	to 17/05/08	27/01/08	to 02/02/08	11/08/07	24/02/08	13/04/08
18/05/08	to 24/05/08	03/02/08	to 09/02/08	18/08/07	02/03/08	20/04/08
25/05/08	to 31/05/08	10/02/08	to 16/02/08	25/08/07	09/03/08	27/04/08
01/06/08	to 07/06/08	17/02/08	to 23/02/08	01/09/07	16/03/08	04/05/08
08/06/08	to 14/06/08	24/02/08	to 01/03/08	08/09/07	23/03/08	11/05/08
15/06/08	to 21/06/08	02/03/08	to 08/03/08	15/09/07	30/03/08	18/05/08
22/06/08	to 28/06/08	09/03/08	to 15/03/08	22/09/07	06/04/08	25/05/08
29/06/08	to 05/07/08	16/03/08	to 22/03/08	29/09/07	13/04/08	01/06/08
06/07/08	to 12/07/08	23/03/08	to 29/03/08	06/10/07	20/04/08	08/06/08
13/07/08	to 19/07/08	30/03/08	to 05/04/08	13/10/07	27/04/08	15/06/08
20/07/08	to 26/07/08	06/04/08	to 12/04/08	20/10/07	04/05/08	22/06/08
27/07/08	to 02/08/08	13/04/08	to 19/04/08	27/10/07	11/05/08	29/06/08
03/08/08	to 09/08/08	20/04/08	to 26/04/08	03/11/07	18/05/08	06/07/08
10/08/08	to 16/08/08	27/04/08	to 03/05/08	10/11/07	25/05/08	13/07/08
17/08/08	to 23/08/08	04/05/08	to 10/05/08	17/11/07	01/06/08	20/07/08
24/08/08	to 30/08/08	11/05/08	to 17/05/08	24/11/07	08/06/08	27/07/08
31/08/08	to 06/09/08	18/05/08	to 24/05/08	01/12/07	15/06/08	03/08/08
07/09/08	to 13/09/08	25/05/08	to 31/05/08	08/12/07	22/06/08	10/08/08
14/09/08	to 20/09/08	01/06/08	to 07/06/08	15/12/07	29/06/08	17/08/08
21/09/08	to 27/09/08	08/06/08	to 14/06/08	22/12/07	06/07/08	24/08/08
28/09/08	to 04/10/08	15/06/08	to 21/06/08	29/12/07	13/07/08	31/08/08
05/10/08	to 11/10/08	22/06/08	to 28/06/08	05/01/08	20/07/08	07/09/08
12/10/08	to 18/10/08	29/06/08	to 05/07/08	12/01/08	27/07/08	14/09/08
19/10/08	to 25/10/08	06/07/08	to 12/07/08	19/01/08	03/08/08	21/09/08
26/10/08	to 01/11/08	13/07/08	to 19/07/08	26/01/08	10/08/08	28/09/08

**Baby due between 2 November 2008 and 30 May 2009**

Week baby due		Start of 15th week before the week baby due		Latest start date for employment with you	Start of 11th week before the week baby due	Start of 4th week before the week baby due
Sunday	Saturday	Sunday	Saturday	Saturday	Sunday	Sunday
02/11/08	to 08/11/08	20/07/08	to 26/07/08	02/02/08	17/08/08	05/10/08
09/11/08	to 15/11/08	27/07/08	to 02/07/08	09/02/08	24/08/08	12/10/08
16/11/08	to 22/11/08	03/08/08	to 09/08/08	16/02/08	31/08/08	19/10/08
23/11/08	to 29/11/08	10/08/08	to 16/08/08	23/02/08	07/09/08	26/10/08
30/11/08	to 06/12/08	17/08/08	to 23/08/08	01/03/08	14/09/08	02/11/08
07/12/08	to 13/12/08	24/08/08	to 30/08/08	08/03/08	21/09/08	09/11/08
14/12/08	to 20/12/08	31/08/08	to 06/09/08	15/03/08	28/09/08	16/11/08
21/12/08	to 27/12/08	07/09/08	to 13/09/08	22/03/08	05/10/08	23/11/08
28/12/08	to 03/01/09	14/09/08	to 20/09/08	29/03/08	12/10/08	30/11/08
04/01/09	to 10/01/09	21/09/08	to 27/09/08	05/04/08	19/10/08	07/12/08
11/01/09	to 17/01/09	28/09/08	to 04/10/08	12/04/08	26/10/08	14/12/08
18/01/09	to 24/01/09	05/10/08	to 11/10/08	19/04/08	02/11/08	21/12/08
25/01/09	to 31/01/09	12/10/08	to 18/10/08	26/04/08	09/11/08	28/12/08
01/02/09	to 07/02/09	19/10/08	to 25/10/08	03/05/08	16/11/08	04/01/09
08/02/09	to 14/02/09	26/10/08	to 01/11/08	10/05/08	23/11/08	11/01/09
15/02/09	to 21/02/09	02/11/08	to 08/11/08	17/05/08	30/11/08	18/01/09
22/02/09	to 28/02/09	09/11/08	to 15/11/08	24/05/08	07/12/08	25/01/09
01/03/09	to 07/03/09	16/11/08	to 22/11/08	31/05/08	14/12/08	01/02/09
08/03/09	to 14/03/09	23/11/08	to 29/11/08	07/06/08	21/12/08	08/02/09
15/03/09	to 21/03/09	30/11/08	to 06/12/08	14/06/08	28/12/08	15/02/09
22/03/09	to 28/03/09	07/12/08	to 13/12/08	21/06/08	04/01/09	22/02/09
29/03/09	to 04/04/09	14/12/08	to 20/12/08	28/06/08	11/01/09	01/03/09
05/04/09	to 11/04/09	21/12/08	to 27/12/08	05/07/08	18/01/09	08/03/09
12/04/09	to 18/04/09	28/12/08	to 03/01/09	12/07/08	25/01/09	15/03/09
19/04/09	to 25/04/09	04/01/09	to 10/01/09	19/07/08	01/02/09	22/03/09
26/04/09	to 02/05/09	11/01/09	to 17/01/09	26/07/08	08/02/09	29/03/09
03/05/09	to 09/05/09	18/01/09	to 24/01/09	02/08/08	15/02/09	05/04/09
10/05/09	to 16/05/09	25/01/09	to 31/01/09	09/08/08	22/02/09	12/04/09
17/05/09	to 23/05/09	01/01/09	to 07/02/09	16/08/08	01/03/09	19/04/09
24/05/09	to 30/05/09	08/02/09	to 14/02/09	23/08/08	08/03/09	26/04/09



These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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**HM Revenue  
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