



HM Revenue
& Customs

Employer Helpbook for Statutory Maternity Pay

To use for employees whose babies are due on
or after 5 April 2009

Including new rates from 5 April 2009

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/payee

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.

If you have used the P11 Calculator for all your employees during the year and have nine or less employees at 5 April you can send us your Employer Annual Return online.

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(2009) *Employer Further Guide to PAYE and NICs*
- CWG5(2009) *Class 1A NICs on benefits in kind*
- 480(2009) *Expenses and Benefits - A tax guide*
- 490 *Employee travel - A tax and NICs guide for employers.*

You can view, download and order the full range of helpbooks, booklets and other forms and guidance from our website at www.hmrc.gov.uk/employers/emp-form.htm or from your Employer CD-ROM.

Or you can order copies from the Employer Orderline:

- by phone **08457 646 646**
- by fax **08702 406 406**.

Forms and guidance in Braille, larger print and audio

For details of employer forms and guidance in Braille, larger 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

New employers and employers with less than three years payroll experience

New Employer Helpline
0845 60 70 143
Monday to Friday
08.00 - 20.00
Saturday and Sunday
08.00 - 17.00

Employers with more than three years payroll experience

Employer Helpline
08457 143 143
Monday to Friday
08.00 - 20.00
Saturday and Sunday
08.00 - 17.00

If you have a hearing or speech impairment, and use a textphone

0845 602 1380
(Only people with specialised equipment such as Minicom are able to use this service.)

A list of helplines and opening hours is available:

- on our website at 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 (HMRC) office can also help you. All our office contact details are on our website at www.hmrc.gov.uk/local/employers/index.htm

Please tell us your employer reference which is on correspondence from your HMRC office.

In person

We can help you with many payroll topics, 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.

This education is available through a range of workshops which are free of charge. Further information is available from our website at www.hmrc.gov.uk/bst or by calling the Advice Team on **0845 603 2691**.

Online Services

For information about our online services go to www.hmrc.gov.uk/online

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

- email helpdesk@ir-efile.gov.uk
- phone **08456 055 999** open seven days a week
08.00 - 20.00.

Contents

Information	3	Does your employee earn enough?	12
Further help	3	What counts as earnings	12
Visits from HMRC	3	How to work out the set period	13
Penalties	3	Quick method for calculating Average Weekly Earnings (AWE)	14
Maternity leave and pay	4	Checksheet for weekly paid - How to work out AWE	14
Statutory Maternity Pay (SMP) calculator	4	Your employee earns enough?	14
Employees and employers in Northern Ireland	4	Checksheet for monthly paid - How to work out AWE	15
Terms and conditions used in this Helpbook	5	Your employee earns enough?	15
New from 5 April 2009	6	Rounding to the nearest whole month when there is not a whole number of months in the set period	15
New SMP rates from 5 April 2009	6	Employee not paid in a regular pay pattern	16
Maternity leave for babies due on or after 5 October 2008	6	Checksheet for employees not paid in a regular pay pattern	16
New penalty regime for errors on returns and documents	6	Your employee earns enough?	16
Employment rights	6	Directors	17
Specific employments	7	Checksheet for directors paid only by a formal vote	17
Casual and short contract employees	7	Your employee earns enough?	17
Agency workers	7	Weekly paid employee gets regular payment earlier or later than normal	18
Mariners	7	Weekly paid employee without whole number of weeks in the set earnings period	18
Forms you may need to use	8	Agency workers, supply teachers, seasonal workers or other sporadic employment	18
MAT B1 <i>Maternity Certificate</i>	8	You take over a business in the set earnings period	18
SMP1 <i>Why I cannot pay you SMP</i>	8	Your employee has more than one job with you	18
SMP2 <i>Statutory Maternity Pay Record Sheet</i>	8	Overpayment/underpayment of earnings made during the set period	18
Using your own versions of the maternity forms	8	Salary sacrifice	18
Flowchart - Operating the SMP scheme	9	Childcare vouchers	18
Has your employee given the right evidence within the time limits?	10	Earnings in the set period where pay rise awarded before or during maternity leave	19
Proof of pregnancy	10	NHS employees	20
Time limits	10	Employee does not qualify and some of their earnings are included in a PAYE Settlement Agreement	20
Has your employee worked for you long enough?	11	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	20
Length of employment	11	Re-calculating your employee's AWE	20
Agency workers	11	When should your employee give you dates for pay and leave?	21
Casual employees, supply teachers, seasonal workers or other sporadic employment	11	Choosing dates	21
Employee works abroad	11	Returning after maternity leave	21
		Employee does not give acceptable notice	21
		Acknowledging your employees notice for SMP and leave	22

Exceptions to the normal conditions for SMP	23	Recovering SMP	30
Reinstatement:		How much do I get back?	30
- after dismissal	23	Where does the money come from?	30
- following service in the Armed Forces	23	If you were not an employer for the whole of 2007-08 and 2008-09	30
Break in employment because of:		Checksheet - If you were not an employer for the whole of 2007-08 and 2008-09	30
Trade disputes or industrial action	23	Checksheet - If you were not an employer at all in that tax year ending before the employee's 15th week before the week baby due	31
Temporary cessation of work	23	Funding from your Accounts Office	32
Public holidays	23	A quick check to see if you need advance funding	32
Sickness or injury	23	Recovery of SMP paid in a previous tax year	32
Adoption leave	23		
Paternity and Parental leave	23	Keeping records	33
Break in employment because of pregnancy	24	Recording payments of SMP	33
Employee leaves job after the start of the 15 week before the week the baby is due or when the baby is born	24	SMP payments and/or recovery covering more than one tax year	33
Baby born in or before the 15th week before week baby due date	24	Recording advance payments	33
Premature or early birth	25	Incorrect payment of SMP	33
Stillbirth	25		
Pregnancy-related absence	25	A list of countries in the European Economic Area (EEA)	34
You take over a business	25	A complete set of tables showing important dates for SMP and maternity leave	35,36
Paying SMP	26		
Start of payment	26		
SMP paid part-weekly	26		
Employee is not returning to work	26		
Stopping payment	26		
Employee does some work for you	26		
Employee works for another employer	27		
Employee is taken into legal custody	27		
Employee becomes sick	27		
Employee dies	27		
The baby dies	27		
You cease to trade	27		
You become insolvent	27		
Paying through an agent	28		
Employee has more than one employer	28		
Paying your employee who has more than one job with you	28		
Non-cash payments	28		
Lump sums	28		
Offsetting SMP against employee's pay	28		
Your employee disagrees with your decision on their SMP entitlement	29		
Written statement	29		
Formal decisions about SMP entitlement	29		
SMP is due but not paid after a formal decision	29		

Information

Further help

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

- contact any HMRC office
- go to www.direct.gov.uk/employee
- go to www.dwp.gov.uk
- go to www.dsdni.gov.uk or
- contact any Advisory, Conciliation and Arbitration Service (Acas) office (go to www.acas.org.uk for details), or **08457 47 47 47** or in Northern Ireland contact the Labour Relations Agency (LRA) (go to www.lra.org.uk for details) or phone **028 9034 1442** about maternity leave or other employment rights.

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

A mother who is not entitled to SMP may be entitled to other Government help. Please tell them to phone Jobcentre Plus on **0800 0556688** for more information or in Northern Ireland the Jobs and Benefits office.

A Department for Work and Pensions online 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

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 and in Northern Ireland the Labour Relations Agency (LRA) will be referred to as LRA go to www.lra.org.uk

Visits from HMRC

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 records.

Penalties

Legislation provides that employers failing or refusing to operate the SMP scheme correctly can incur penalties. Like those in place for PAYE or 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 and £60 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
- should you provide incorrect information or documents, either fraudulently or negligently, in response to a formal information notice the penalty is up to a maximum of £3,000

- if you fraudulently or negligently produce incorrect records the penalty is up to a maximum of £3,000
- any failure by you to give your employee the required information up to a maximum of £300 and £60 for each day the failure continues
- the provision of incorrect information either fraudulently or negligently to your employee, could make you liable to a penalty up to a maximum of £3,000
- 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
- obtaining, either fraudulently or negligently, incorrect funding could make you liable to a penalty up to a maximum of £3,000
- 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.

Where it is considered that a penalty is appropriate it will be imposed by either an officer of HMRC or an independent Tribunal, but in all cases there is a right of appeal.

Depending on the penalty type, appeals against a penalty raised by an officer of HMRC will be heard by an independent Tribunal. Any appeal against a penalty determined by the Tribunal (on a question of law or against the amount) will be to the Upper Tier Tribunal.

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

In addition to the above SMP penalties you also need to be aware that there is a new penalty regime for errors on returns and documents, initially for VAT, PAYE, National Insurance, Capital Gains Tax, Income Tax, Corporation Tax and the Construction Industry Scheme.

For these taxes, it applies to returns or other documents for tax periods starting on or after 1 April 2008 that are due to be filed on or after 1 April 2009.

This means that if you don't take reasonable care to get your taxes right you may incur a penalty for errors made during 2008-09 and later years.

Maternity leave and pay

The Department for Business, Enterprise and Regulatory Reform (BERR) guidance gives information about maternity leave and pay. Go to www.businesslink.gov.uk/workandfamilies

Free confidential advice on employment law is available from Acas at www.acas.org.uk or phone **08457 47 47 47**.

Statutory Maternity Pay (SMP) calculator

There is an easy and quick way to calculate SMP.

The SMP calculator is available on our website, go to www.hmrc.gov.uk/employers

The calculator will help you work out if your employee is entitled to SMP and, if so, provide a schedule of the payments that you should make. It will also help you work out if you are entitled to recover any of the SMP you have paid to your employees in each month. There is a list of frequently asked questions on SMP on our website www.hmrc.gov.uk/employers/smp-faq.htm

Your Employer CD-ROM also includes a calculator. Go to '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.

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 maternity leave schemes
- the Incapacity Benefit Branch (IB), Castle Court, Belfast deals with social security claims for Maternity Allowance and Incapacity Benefit. For more information go to 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 provides basic information on this. More information including employment protection legislation is available from www.delni.gov.uk

Free confidential advice on employment law is available from the Labour Relations Agency (LRA). Go to www.lra.org.uk or phone **028 9032 1442**.

Terms and conditions used in this Helpbook

Employee

For statutory payments an **employee** is a person whose earnings attract a liability for employer's secondary Class 1 NICs, or would but for your employee's age or the 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 for statutory payments.

A person who does not have an employer in the UK liable to pay secondary NICs on their earnings (for example some people who work in embassies) may pay voluntary employee Class 1 NICs. Such a person is not an employee for statutory payment purposes.

If you are not sure who is an employee and who is an employer for statutory payments, contact your local HMRC office.

Employer

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.

For statutory payment purposes, if you have to pay employer's secondary Class 1 NICs for your employees, or would but for their age or level of earnings and they satisfy all the qualifying conditions for statutory payments then you will be responsible for making the statutory payment.

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 or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**.

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. 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. 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. For 2009-10 the LEL is £95.00 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.businesslink.gov.uk/workandfamilies

For examples look in the Learning Zone on your Employer CD-ROM.

New from 5 April 2009

New SMP rates from 5 April 2009

Pay period started on or after 5 April 2009, the first Sunday in April:

- first six weeks of payment at 90% of your employee's Average Weekly Earnings, then
- the lower of
 - 90% of your employee's Average Weekly Earnings, or
 - £123.06.

At the time of going to press the rates above were still subject to Parliamentary Approval. If there is any change you will be advised on HMRC website, in the Employer Bulletin and in other HMRC publications.

Maternity leave for babies due on or after 5 October 2008

Women whose babies are due on or after 5 October 2008 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.businesslink.gov.uk/workandfamilies or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9034 1442**.

New penalty regime for errors on returns and documents

You need to be aware that there is a new penalty regime for errors on returns and documents. It applies to tax returns or other documents for tax periods starting on or after 1 April 2008 that are due to be filed on or after 1 April 2009.

For more information on penalties see page 3.

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 breastfeeding
- 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 leave, is automatically 'unfair dismissal'.

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

www.businesslink.gov.uk/workandfamilies

For further information on employment rights, contact Acas at www.acas.org.uk or phone **08457 47 47 47**.

Or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9034 1442**.

Information on all aspects of employment legislation is also usually available from accountants, Citizens Advice, 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 you will be told to issue a form SMP1. 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 or phone **08457 47 47 47**. Or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9034 1442**.

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

Specific employments

Casual and short contract employees

General

A casual employee is usually someone who works for somebody as and when they are required on a series of short contracts of employment, but:

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

Casual employees are also known as short contract employees.

Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual employee's earnings then you will have to pay them (SMP) if they satisfy all the qualifying conditions. If you are not sure whether you have to deduct PAYE tax and Class 1 NICs from the employee's earnings contact your local HMRC office.

Leave

Casual employees are entitled to maternity leave if they satisfy all the qualifying conditions. If you are not sure whether a casual employee is entitled to leave contact Acas at www.acas.org.uk or phone **08457 47 47 47** or in Northern Ireland contact the contact the LRA at www.lra.org.uk or phone **028 9032 1442**.

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) 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 HMRC office.

Leave

Agency workers who are not employed under a contract of employment are not entitled to maternity leave. If you are not sure whether a worker is employed under a contract of employment, contact Acas at www.acas.org.uk or phone **08457 47 47 47** in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**.

Mariners

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

If you are not sure if the above applies, contact your local HMRC office or phone the Employer Helpline on **08457 143 143**.

If you are not sure whether the mariner can get leave or not, contact Acas at www.acas.org.uk or phone **0845 74 74 747** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **0289 03 21 442**.

Forms you may need to use

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.

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 The Phone Book, or go to www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp In Northern Ireland go to www.dsdni.gov.uk

SMP2 Statutory Maternity Pay record sheet

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

All HMRC maternity forms are available from:

- Employer CD-ROM
- Orderline phone **08457 646 646**
- 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 forms

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

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.

SMP2 Statutory Maternity Pay record sheet

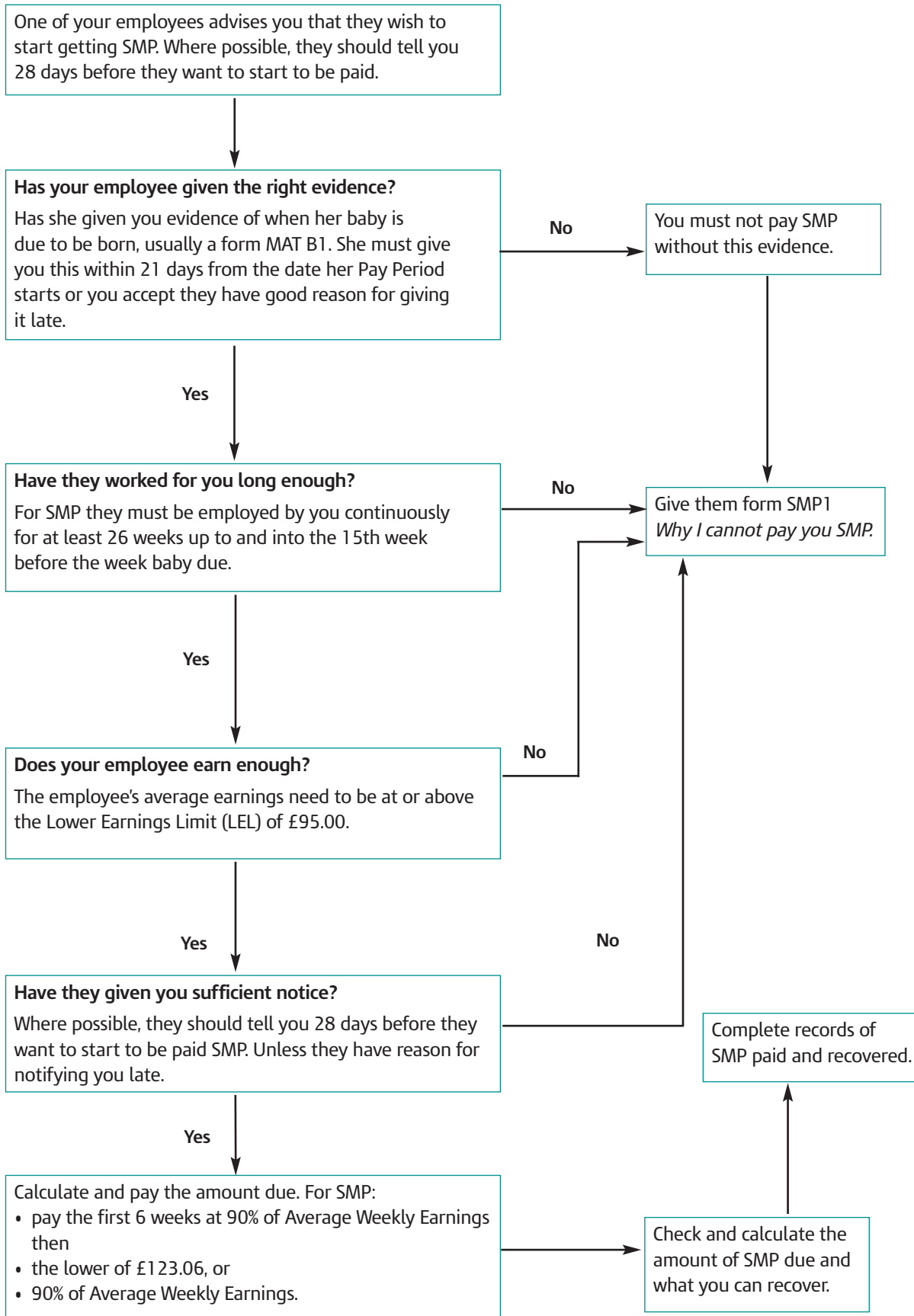
It must include:

- 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.

Flowchart - Operating the SMP scheme



Has your employee given the right evidence within the time limits?

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.)

After a maternity certificate has been given, no further maternity certificate based on the same examination shall be furnished other than a maternity certificate by way of replacement of an original which has been lost or mislaid, in which case it shall be clearly marked duplicate.

For example, if a woman has more than one job, she needs to ask the other employer what other evidence they would accept to confirm her date of confinement. This evidence can be a letter and must be signed by a doctor or midwife that includes the pregnant woman's name and the date of confinement. It must also be stamped and if issued by the midwife, must have the midwife's PIN number and the expiry date of registration.

There is no reason why the woman cannot show the other employer the original MATB1 which the employer can then photocopy and then note the copy that the original has been seen and this is a true copy of the original. The MAT B1 then can be given back to the employee for use by the other employer.

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 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.

Has your employee worked for you long enough?

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 tables on pages 35 and 36, then read across to the latest start date for employment with you. If she started work after that date she does not qualify. 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.

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 35 and 36.

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
- 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.

Casual employees, supply teachers, seasonal workers or other sporadic employment

Casual employees, 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.

Employer Helpbook E15(2009)

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 35 and 36.

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.

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

- she was on paid leave, 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 23 and 24 depending on why she turned down the work.

Employee works abroad

Where she **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.

She can get Statutory Maternity Pay (SMP), if you were liable to pay Class 1 NIC's 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 high enough.

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 35 and 36.

If you were not liable to pay Class 1 NICs throughout that period and she worked for you in the European Economic Area (EEA), see page 34 for the list of countries, she may still be able to get SMP, see the paragraph below.

Where she works for you within the EEA 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 35 and 36.

All other rules apply.

Leave

Employees who work outside the UK may be entitled to maternity leave under UK law. The law in this area is complex. For more information please contact Acas at www.acas.org.uk or phone **08547 47 47 47** in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442** or seek independent legal advice. If there is a dispute an employment tribunal will need to decide the issue.

Does your employee earn enough?

What counts as earnings

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

Include:

- Payments which are earnings for Class 1 NICs. (Your employee does not have to have paid NICs. for detail see Terms and Conditions on page 5).
- 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.

SMP depends 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 been paid in that period. See the Quick Method on page 14 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 14 and 15. When you work out how much you pay, look at when the pay week began.

For help online go to 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.

Where a salary sacrifice arrangement is in place, see page 18.

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

If your employee has a **contractual** pay day this is always the normal pay day, even if you pay them early in a particular month.

Example - weekly paid employee

Employee paid every Friday

Date baby due 12/09/09

15th week before week baby due 24/05/09 to 30/05/09

Pay day at least 8 weeks before 29/05/09

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										
03/04	04/04	10/04	17/04	24/04	01/05	08/05	15/05	22/05	29/05	
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 4 April 2009 to 29 May 2009

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 12/09/09

15th week before week baby due 24/05/09 to 30/05/09

Pay day at least 8 weeks before 30/05/09

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				
31/03/09	01/04/09	30/04/09	30/05/09	
Earnings				Total
		685.75	723.55	1,409.30

The set period is therefore 1 April 2009 to 30 May 2009

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

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

Quick method for calculating Average Weekly Earnings (AWE)

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 Statutory Maternity Pay (SMP). Go to the 'Your employee earns enough?' section below.

Pay period starts on or before 4 April 2009

If your employee always earns more than the amount shown above go to 'Your employee earns enough?' section below.

Babies due between 19 July 2009 and 17 July 2010

If your employee always earns less than £95.00 gross a week they will not qualify for SMP. Go to the 'Your employee earns enough?' section below.

Pay period starts on or after 5 April 2009

If your employee always earns more than the amount shown above go to 'Your employee earns enough?' section below.

If your employee sometimes earns more or less than £95.00 a week you must work out their Average Weekly Earnings (AWE). Use the weekly checksheet below or the monthly checksheet on page 15.

Checksheet for weekly paid – How to work out AWE

To work out AWE you must:

- always use the set period – worked out using the checksheet
- only include earnings paid in 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.

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).

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.)

Your employee earns enough?

If the amount at 6:

- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009, or
 - is at least £95.00 gross a week for babies due between 19 July 2009 and 17 July 2010
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SMP. You should give them form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 21 for 'When should your employee give you dates for pay and leave?'

Checksheet for monthly paid – How to work out AWE

To work out AWE you must:

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

To work out AWE for employees paid monthly	
1. Find the date baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Saturday in the 15th week before the week baby is due.	<input type="text" value="/ /"/>
3. Find the date of the last normal pay day on or before that Saturday. This is the last day of the set period.	<input type="text" value="/ /"/>
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.	<input type="text" value="/ /"/>
5. Add together the earnings paid in between the dates at 4 and 3 (inclusive).	<input type="text" value="£"/>
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 'Rounding to the nearest whole month when there are not a whole number of months in the set period' see below.	<input type="text"/>
7. Divide the figure in 5 by the number of whole months in 6.	<input type="text" value="£"/>
8. Multiply the figure in 7 by 12.	<input type="text" value="£"/>
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" value="£"/>

Your employee earns enough?

If the amount at 9:

- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009, or
- is at least £95.00 gross a week for babies due between 19 July 2009 and 17 July 2010

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SMP. You should give them form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 21 for 'When should your employee give you dates for pay and leave?'

Rounding to the nearest whole month when there isn't a whole number of months in the set period

For monthly paid staff, where there is a part month payment in the set period, between the dates at 2 and 1 using the checksheet above.

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

- count the number of whole months
- count the number of odd days
- round the number of odd days up or down in line with these rounding rules.

If the date at 3 is in:

- February round 14 days or less down and 15 days or more up
- any month except February 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 above.

Employee not paid in a regular pay pattern

If you do not pay your employees in a regular pay pattern use the checksheet below.

Checksheet for employees not paid in a regular pay pattern

To work out AWE if you do not pay your employees in a regular pay pattern	
1. Find the date baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Saturday in the 15th week before the week baby due.	<input type="text" value="/ /"/>
3. Find the date of the last pay day on or before that Saturday. This is the last day of the set period.	<input type="text" value="/ /"/>
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.	<input type="text" value="/ /"/>
5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).	<input type="text" value="£"/>
6. Work out the number of days between the dates in 4 and 3 (inclusive).	<input type="text"/>
7. Divide the figure in 5 by the number of days in 6.	<input type="text" value="£"/>
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.)	<input type="text" value="£"/>

Your employee earns enough?

If the amount at 8:

- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009, or
 - is at least £95.00 gross a week for babies due between 19 July 2009 and 17 July 2010
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SMP. You should give them form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 21 for 'When should your employee give you dates for pay and leave?'

Directors

Paid contractually

If the director is contractually paid a regular salary calculate their Average Weekly Earnings (AWE) like any other employee by using the checksheets on pages 14 or 15.

Paid both contractually and by formal vote

A director who is paid contractually may also be paid a bonus or fees by a formal vote. You must still calculate their AWE using the checksheets on pages 14 or 15. You should only include the monies voted by formal vote if the date of the vote falls in the set period.

Directors paid only by a formal vote

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

Monies drawn in anticipation of a formal vote

Some directors may regularly draw money from the business in anticipation of a formal vote. **Do not include this money when working out the director's AWE, even if NICs were deducted at the time they were paid.**

Checksheet for directors paid only by a formal vote

To work out AWE for directors paid only 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.

3. Find the date of the last formal vote 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 until the date of the previous formal vote 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 money voted between the dates in 4 and 3 (inclusive).
(Do not include any money drawn in anticipation of the vote.)

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 'Rounding to the nearest whole month when there are not a whole number of months in the set period' on page 15.

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.)

Your employee earns enough?

If the amount at 9:

- is at least £90.00 gross a week for babies due between 20 July 2008 and 18 July 2009, or
 - is at least £95.00 gross a week for babies due between 19 July 2009 and 17 July 2010
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SMP. You should give them form SMP1 *Why I cannot pay you SMP*. Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 21 for 'When should your employee give you dates for pay and leave?'

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 5 of the weekly checksheet on page 14. At 6 divide the figure in 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 5 of the weekly checksheet on page 14. At 6 divide the figure in 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 checksheet on page 14. 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 did not work for some of the weeks.

Employees paid calendar monthly

Use the checksheet on page 15 to work out their Average Weekly Earnings (AWE).

You take over a business in the set earnings period

If you:

- take over a business between the dates in 5 and 3 (inclusive) of the checksheets on pages 14 or 15, **and**
- have worked out that the mother has been employed by you and the previous employer long enough to get SMP, see 'You take over a business' on page 25. You **must** still add together all her earnings in between the dates in 5 and 3 (inclusive) even where some of them were paid by the previous employer.

Your employee has more than one job with you

Your employee could have more than one job with you.

If all the employee's earnings have to be added together to work out Class 1 NICs they have to be added together to work out the employee's AWE, and the employee can only get one lot of SMP.

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.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet CWG2(2009) *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 is due.

Salary sacrifice

If an employee has entered into a salary sacrifice with you their AWE is calculated using the amount of earnings actually paid to them during the set period. For more information on the rules for salary sacrifice see www.hmrc.gov.uk/specialist/salary_sacrifice.htm

Childcare vouchers

Some schemes for childcare support provided by you and made available to your employees may be exempt from PAYE tax and Class 1 NIC's.

For the purposes of calculating AWE for SMP the calculation is based on earnings which are subject to NICs. Further information is available on the treatment of childcare vouchers for PAYE tax and NICs see Employer Helpbook E18(2009) *How to help your employees with childcare*.

The value of the childcare vouchers provided during the maternity pay period may not be deducted from the SMP.

Where an employee agrees to accept childcare vouchers as part of a salary sacrifice their SMP entitlement will be assessed on their gross earnings on which NICs are payable.

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

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 Additional Maternity Leave.)

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 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.

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 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 AWE of less than:

- £90.00 for babies due between 20 July 2008 and 18 July 2009
- £95.00 for babies due between 19 July 2009 and 17 July 2010

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(2009) *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 as shown on this page.

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 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:

- £90.00 for babies due between 20 July 2008 and 18 July 2009
- £95.00 for babies due between 19 July 2009 and 17 July 2010

your employee's earnings are high enough to get SMP.

So:

- work out the total amount of SMP she is now entitled to
- take away any SMP you have already paid her
- pay any extra SMP due.

Your employee may not be entitled to any extra SMP 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:

- £90.00 for babies due between 20 July 2008 and 18 July 2009.
- £95.00 for babies due between 19 July 2009 and 17 July 2010

your employee's earnings are high enough to get SMP.

So:

- work out the total amount she is now entitled to
- take away any SMP you have already paid her
- pay any extra SMP due.

If the new AWE are less than the LEL shown above she still cannot get SMP. Give the mother 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.

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

Leave

To qualify for maternity leave your employee should tell you when she expects to stop work and start her leave by the Saturday of the 15th week before the week baby due (use tables on pages 35 and 36).

You must confirm the date in writing including when you expect her back. (See sample letter on page 22 or on the Employer CD-ROM.)

For more information go to www.businesslink.gov.uk/workandfamilies

Pay

Where possible your employee must give you 28 days notice before they want to be start to be paid.

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

Notice can be given:

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

In practice your employee will probably tell you about her leave and pay dates at the same time.

Choosing dates

Your employee has the right to choose when she wants to start maternity pay and leave. SMP cannot start before the 11th week unless your employee gives birth before then. For early births - SMP and maternity leave begin the day after the birth. (Use the tables on pages 35 and 36.)

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. For more information on leave go to www.businesslink.gov.uk/workandfamilies

Change of mind

Your employee can change her mind about the start date but should give you 28 days notice of her 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.

Employee does not give acceptable notice

Pay

If your employee did not give you acceptable notice and she does not have a good reason for being late 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.

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/SMP 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 for more information phone Jobcentre Plus on **0800 0556688**. 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 week's 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.

Exceptions to the normal conditions for SMP

Reinstatement after dismissal

If the mother did not work for you during the period you worked out using the tables on pages 35 and 36:

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

they are entitled to SMP, as if they had not been dismissed.

All other rules apply.

Reinstatement following service in the Armed Forces

If the mother did not work for you during the period you worked out using the tables on pages 35 and 36, because she was serving in the Armed Forces and she returned to work for you within six months of the end of her service in the Forces under the Reserve Forces (Safeguard of Employment) Regulations, she may still be able to get SMP.

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.

All other rules apply.

Break in employment because of trade disputes or industrial action

If the mother did not work for you during the period you worked out using the tables on pages 35 and 36, because she was on strike, she may still be able to get SMP.

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.

Break in employment because of temporary cessation of work

If the mother 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 35 and 36, because you did not have work to offer her, she can get SMP.

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 the mother 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 35 and 36, because of public holidays, she can get SMP.

All the other rules apply.

Break in employment because of sickness or injury

If the mother is a short-term contract agency worker who did not work for you for the whole of the period you worked out using the tables on pages 35 and 36, because she was sick or injured, she can get SMP 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.

Break in employment because of adoption leave

If the mother 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 35 and 36:

- because she was on adoption leave, **and**
- she worked for you before and after the break she can get SMP. 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(2009) *Employer Helpbook for Statutory Adoption Pay*, for more information about adoption leave.

Break in employment because of paternity and parental leave

A short-term contract or agency worker who did not work for you during the whole period you worked out using the tables on pages 35 and 36:

- because they took paternity leave when they were adopting a child or when a baby was born, **and**
- because she took parental leave, **and**
- she worked for you before and after the break can get SMP. 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 35 and 36.

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.businesslink.gov.uk/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

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 35 and 36.

Employee leaves job after the start of the 15 week before the week the baby is due or when the baby is born

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 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 35 and 36.

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 pay period starts the day following the day on which she left her employment.

Baby born in or before the 15th week before week 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

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 checksheet on page 14 or the monthly checksheet on page 15 but change step 1 and step 2, as shown below.

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 14 and 15. The total AWE should be compared to the LEL on the Saturday before the actual date of birth.

When should your employee 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 22 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.

Premature or early birth

If the baby is born early 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.

Your employee will not have been able to give you advance notice, but they must tell you the date of birth as soon as possible.

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 MATB1 *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. All the other rules on payment apply.

Stillbirth

Your employee is entitled to SMP and maternity leave if the baby is stillborn in or after the 25th week of pregnancy. To apply this rule you should treat the 16th week before the week baby due date as being the 25th week of pregnancy. The rules are the same as for a live birth.

If the baby is stillborn before the 25th week of pregnancy SMP is not payable.

If a baby is born alive but survives only for an instant, it is a live birth whenever it is born 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 35 and 36, 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 HMRC office or the Employer Helpline for advice on **08457 143 143**.

You take over a business

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 transfer or 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 or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**.

If the regulations do not apply, continuity of employment may still be not broken when:

- 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. This applies as long as she worked for you and the previous employer during the period you worked out using the tables on pages 35 and 36.

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).

All the other rules apply. The tables for working out the periods to use are on pages 35 and 36.

Paying SMP

Start of payment

SMP is a weekly payment. It should be paid on the employee's next usual pay day on or after the last day of their pay week.

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 24
- for premature or early birth, see page 25
- if your employee has a pregnancy-related absence, see page 25.

SMP should be paid in the same way as you would pay earnings and 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 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.

Employee is not returning to work

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

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 on page 27.

Employee does some work for you

A woman can work for you under her contract of service and during her SMP pay period for up to ten days without losing her SMP for the week in which that work is done. These ten 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.

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.

KIT days example

If a woman works Monday to Friday, the SMP pay period is 4 March 2009 to 1 December 2009, and the SMP pay week is Wednesday to Tuesday.

If a woman returns to work for six days:

- Monday to Wednesday, 31 August 2009 to 2 September 2009, and
- Monday to Wednesday, 7 September 2009 to 9 September 2009.

The SMP pay weeks for this period are:

- 26 August 2009 to 1 September 2009 (two KIT days)
- 2 September 2009 to 8 September 2009 (three KIT days)
- 9 September 2009 to 15 September 2009 (one KIT day).

She then works for five days Monday to Friday 26 October 2009 to 30 October 2009.

The SMP pay weeks for this period are:

- 21 October 2009 to 27 October 2009 (two KIT days)
- 28 October 2009 to 3 November 2009 (two KIT days, one non-KIT day).

SMP is payable for all of the above SMP pay weeks except for the pay week 28 October 2009 to 3 November 2009 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.

The amount of pay they receive for work done is something for you to agree with your employee. You may count the amount of SMP towards the contractual pay agreed with your employee. This is something which both parties need to agree before any work is done. You must pay the weekly SMP rate the employee is entitled to and also comply with your statutory obligations, such as paying at least the National Minimum Wage (NMW).

For further information contact the NMW Helpline **0845 6000 678**.

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

If your employee does more than ten 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

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.

If your employee works for another employer during the SMP 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. Tables showing these dates are on pages 35 and 36.

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 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 from the start of the week they work for that employer. Your liability to pay SMP ends completely on the last day of the week SMP was paid before they started work. Give the mother 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.

Employee is taken into legal custody

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

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, usually this means if they are arrested or in prison. They are not in legal custody if they are:

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

Employee becomes sick

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.

Employee dies

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

The baby dies

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

You cease to trade

If you cease to trade you remain liable to pay any outstanding SMP payments until your employee has received their full entitlement or their entitlement ends for one of the reasons outlined throughout this Helpbook.

You become insolvent

If you become insolvent during the SMP pay period, HMRC will pay your employee's SMP from the date of the insolvency.

You should tell your employees to contact their local HMRC office.

It will help if you or the administrator, liquidator or other similar officer 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 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.

Employee has more than one employer

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

Paying your employee who 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 from you, when you are looking at whether their earnings were high enough in each employment, see page 12.

If they can only get one payment of SMP from you, they should take the same time off from each job otherwise they will lose some of their SMP because they are working for you but see KIT days on page 26.

If they are entitled to more than one payment of SMP from you they can start their SMP at different times in relation to each contract. But, subject to KIT days, can only get SMP from you if they are not working for you under either contract.

If, for example, a woman starts her MPP under contract A earlier than her MPP under contract B, then she can only work for up to 10 days under contract B before SMP under contract A has to stop.

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 in full.

For more information on non-cash payments see www.hmrc.gov.uk/specialist/salary_sacrifice.htm or contact Acas at www.acas.org.uk or phone 08457 47 47 47 or in Northern Ireland contact the LRA at www.lra.org.uk or phone 028 9032 1442.

Lump sums

You can pay your employee their SMP in a lump sum, but we do not recommend it in case something happens which means that they are not entitled to all the SMP you have paid. If there is an overpayment you cannot recover this amount from the NI fund but may recover it from your employee.

For example, if they decide to return to work early before the end of the MPP.

If you do decide to pay the SMP 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(2009) *Day-to-day payroll*, for more information on working out NICs.

Offsetting SMP against employee's pay

If you pay maternity pay under an employee's contract of employment you must pay your employee at least the amount of SMP they are entitled to for each week in the pay period but you can offset the contractual payment against your liability to pay SMP for the same week for which it is payable.

If your employee is entitled to more SMP than the contractual maternity pay you may offset the contractual pay but you must pay the balance of SMP due. Even if you are paying your employee contractual maternity pay you may still recover an amount based on your full SMP liability from the NI Fund in the normal way.

However, if you have set up a scheme whereby your employee pays a contribution towards their contractual maternity pay, they are entitled to the full amount of SMP on top of their maternity pay from the scheme. If you share the cost of the maternity pay scheme, then you must calculate what proportion of the maternity pay is from your contributions and ensure that you pay your employee any balance of SMP needed to bring your share up to the SMP due. You cannot offset any of the maternity pay they have paid for against their SMP entitlement.

Your employee disagrees with your decision on their SMP entitlement

Written statement

If you decide not to pay SMP, 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 is payable for
- how much SMP you consider your employee is entitled to
- why you do not regard yourself as liable to pay SMP 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 entitlement

If your employee does not agree with your decision about their SMP entitlement, they can ask HMRC to make a formal decision. An officer of HMRC can also ask for a formal decision on entitlement.

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

Before asking for a formal decision from HMRC, your employee will be expected to have asked you for a written statement about their SMP position. They may 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, the decision will give the time limit by which you must pay the SMP. You will be given full details of your appeal rights with the notice of decision.

If either of you appeals, HMRC 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 must comply with the appropriate legislation.

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

The Tribunal Service 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 therefore in everyone's interest to put all the facts before the officer making the decision in the first place.

SMP is due but not paid after a formal decision

If you fail to pay SMP within the legal time limit following a decision:

- by HMRC that SMP is due and you make no appeal, or
- by an independent Tribunal that SMP is due at an appeal hearing, you may incur a civil penalty.

For details on penalties, see page 3.

Recovering SMP

How much do I get back?

The amount you get back normally depends on your total gross, employer's plus employee's, Class 1 NICs 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 NIC's is **£45,000 or less** you are entitled to:

- 100% of the Statutory Maternity Pay (SMP), and
- an additional amount as compensation for the NICs you pay on the SMP. The compensation rate for 2009-10 is 4.5%.

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

The qualifying tax year for SMP purposes is the last complete tax year before the employee's 15th week before the week baby due.

If your annual liability for Class 1 NIC's is **more than £45,000** you are entitled to 92% of the SMP.

Add together all payments of SMP 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 NICs for the previous tax year and this could be **either more or less than £45,000**. You will need to check whether it is £45,000, more than £45,000 or less than £45,000:

- for babies due between 20 July 2008 and 25 July 2009, check your liability for 2007-08.
- for babies due between 26 July 2009 and 24 July 2010, check your liability for 2008-09.

Where does the money come from?

Use the money you have to pay over to HMRC:

- 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 on page 32.

If you were not an employer for the whole of 2007-08 and 2008-09

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

- for babies due between 20 July 2008 and 25 July 2009, check your liability for 2007-08
- for babies due between 26 July 2009 and 24 July 2010, check your liability for 2008-09.

Checksheet - if you were not an employer for the whole of 2007-08 and 2008-09

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 or less you are entitled to:

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

If the figure in 4 is more than £45,000 you are entitled to 92% of the SMP.

Checksheet - If you were not an employer at all in that tax year ending before the employer's 15th week before the week baby due.

1. Find the date baby is due.

2. Find the date of the Sunday in the 15th week before the week baby due.

3. Identify the tax year in which the Sunday in the 15th week before the week baby due falls.

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.

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.

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.

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

8. Multiply the figure in 7 by 12.

If the figure in 8 is £45,000 or less you are entitled to:

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

If the figure in 8 is more than £45,000 you are entitled to 92% of the SMP.

Funding from your Accounts Office

If you need to get the SMP 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 HMRC Accounts Office to pay you the balance of the amount you are entitled to recover.

You can apply online at 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.

A quick check to see if you need advance funding

Total amount of Statutory Maternity Pay (SMP)	A	<input type="text" value="£"/>
PAYE tax	B	<input type="text" value="£"/>
National Insurance contributions (including those on SMP)	C	<input type="text" value="£"/>
Student Loan deductions	D	<input type="text" value="£"/>
Construction Industry Scheme deductions	E	<input type="text" value="£"/>
Total amount you will have available in the same tax month or quarter (total of boxes B + C + D + E) =	F	<input type="text" value="£"/>

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**.

Recovery of SMP paid in a previous tax year

If you need to recover SMP 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 They can be obtained from your local HMRC office or from the Employer Orderline on **08457 646 646**.

Send the completed form SP32 to:

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

Keeping records

All records must be kept for at least three years after the end of the tax year to which they relate.

You must keep:

- the MATB1 certificate. If you give this back to your employee with form SMP1, *Why I cannot pay you SMP*, keep a copy of the declaration
- a record of the payment dates and the amount paid
- the date the pay period began
- a record of any unpaid SMP 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.

Recording payments of SMP

You must record payments of SMP to your employee in the same way as their wages. Record the payments on your employee's P11 or P12 Deductions Working Sheet, or computerised equivalent as you will need to record the amount of SMP you have paid and recovered when you complete form P35 *Employer Annual Return* and the P14 at the end of the tax year.

For more information on keeping records go to Helpbook E10(2009) *Finishing the tax year up to 5 April 2009*. Helpbook E11(2009) *Starting the tax year 6 April 2009* and on the Employer CD-ROM or www.hmrc.gov.uk/payrollsoftware

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

You cannot make a recovery in one tax year that relates to SMP payments made in a previous tax year. For more information about how you can record and recover payments made in a previous tax year, see page 32.

Where payments and/or recovery of SMP start in one tax year and end in a later tax year, you should only record the 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 HMRC Accounts Office.

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

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

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

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

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

See CWG2(2009) *Employer Further Guide to PAYE and NICs*, for information on how to correct errors in recording NICs.

Any wrongly paid SMP 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.

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, Réunion, Corsica and Saint-Pierre et Miquelon
- Germany
- Gibraltar
- Greece, including Macedonia, Thrace, Epirus, Thessaly, Continental Greece, the Peloponnese, 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
- UK, including Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

A complete set of tables showing dates for SMP and maternity leave

Baby due between 5 April 2009 and 28 November 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
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	01/02/09	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
31/05/09	to 06/06/09	15/02/09	to 21/02/09	30/08/08	15/03/09	03/05/09
07/06/09	to 13/06/09	22/02/09	to 28/02/09	06/09/08	22/03/09	10/05/09
14/06/09	to 20/06/09	01/03/09	to 07/03/09	13/09/08	29/03/09	17/05/09
21/06/09	to 27/06/09	08/03/09	to 14/03/09	20/09/08	05/04/09	24/05/09
28/06/09	to 04/07/09	15/03/09	to 21/03/09	27/09/08	12/04/09	31/05/09
05/07/09	to 11/07/09	22/03/09	to 28/03/09	04/10/08	19/04/09	07/06/09
12/07/09	to 18/07/09	29/03/09	to 04/04/09	11/10/08	26/04/09	14/06/09
19/07/09	to 25/07/09	05/04/09	to 11/04/09	18/10/08	03/05/09	21/06/09
26/07/09	to 01/08/09	12/04/09	to 18/04/09	25/10/08	10/05/09	28/06/09
02/08/09	to 08/08/09	19/04/09	to 25/04/09	01/11/08	17/05/09	05/07/09
09/08/09	to 15/08/09	26/04/09	to 02/05/09	08/11/08	24/05/09	12/07/09
16/08/09	to 22/08/09	03/05/09	to 09/05/09	15/11/08	31/05/09	19/07/09
23/08/09	to 29/08/09	10/05/09	to 16/05/09	22/11/08	07/06/09	26/07/09
30/08/09	to 05/09/09	17/05/09	to 23/05/09	29/11/08	14/06/09	02/08/09
06/09/09	to 12/09/09	24/05/09	to 30/05/09	06/12/08	21/06/09	09/08/09
13/09/09	to 19/09/09	31/05/09	to 06/06/09	13/12/08	28/06/09	16/08/09
20/09/09	to 26/09/09	07/06/09	to 13/06/09	20/12/08	05/07/09	23/08/09
27/09/09	to 03/10/09	14/06/09	to 20/06/09	27/12/08	12/07/09	30/08/09
04/10/09	to 10/10/09	21/06/09	to 27/06/09	03/01/09	19/07/09	06/09/09
11/10/09	to 17/10/09	28/06/09	to 04/07/09	10/01/09	26/07/09	13/09/09
18/10/09	to 24/10/09	05/07/09	to 11/07/09	17/01/09	02/08/09	20/09/09
25/10/09	to 31/10/09	12/07/09	to 18/07/09	24/01/09	09/08/09	27/09/09
01/11/09	to 07/11/09	19/07/09	to 25/07/09	31/01/09	16/08/09	04/10/09
08/11/09	to 14/11/09	26/07/09	to 01/08/09	07/02/09	23/08/09	11/10/09
15/11/09	to 21/11/09	02/08/09	to 08/08/09	14/02/09	30/08/09	18/10/09
22/11/09	to 28/11/09	09/08/09	to 15/08/09	21/02/09	06/09/09	25/10/09

Baby due between 29 November 2009 and 29 May 2010

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
29/11/09	to 05/12/09	16/08/09	to 22/08/09	28/02/09	13/09/09	01/11/09
06/12/09	to 12/12/09	23/08/09	to 29/08/09	07/03/09	20/09/09	08/11/09
13/12/09	to 19/12/09	30/08/09	to 05/09/09	14/03/09	27/09/09	15/11/09
20/12/09	to 26/12/09	06/09/09	to 12/09/09	21/03/09	04/10/09	22/11/09
27/12/09	to 02/01/10	13/09/09	to 19/09/09	28/03/09	11/10/09	29/11/09
03/01/10	to 09/01/10	20/09/09	to 26/09/09	04/04/09	18/10/09	06/12/09
10/01/10	to 16/01/10	27/09/09	to 03/10/09	11/04/09	25/10/09	13/12/09
17/01/10	to 23/01/10	04/10/09	to 10/10/09	18/04/09	01/11/09	20/12/09
24/01/10	to 30/01/10	11/10/09	to 17/10/09	25/04/09	08/11/09	27/12/09
31/01/10	to 06/02/10	18/10/09	to 24/10/09	02/05/09	15/11/09	03/01/10
07/02/10	to 13/02/10	25/10/09	to 31/10/09	09/05/09	22/11/09	10/01/10
14/02/10	to 20/02/10	01/11/09	to 07/11/09	16/05/09	29/11/09	17/01/10
21/02/10	to 27/02/10	08/11/09	to 14/11/09	23/05/09	06/12/09	24/01/10
28/02/10	to 06/03/10	15/11/09	to 21/11/09	30/05/09	13/12/09	31/01/10
07/03/10	to 13/03/10	22/11/09	to 28/11/09	06/06/09	20/12/09	07/02/10
14/03/10	to 20/03/10	29/11/09	to 05/12/09	13/06/09	27/12/09	14/02/10
21/03/10	to 27/03/10	06/12/09	to 12/12/09	20/06/09	03/01/10	21/02/10
28/03/10	to 03/04/10	13/12/09	to 19/12/09	27/06/09	10/01/10	28/02/10
04/04/10	to 10/04/10	20/12/09	to 26/12/09	04/07/09	17/01/10	07/03/10
11/04/10	to 17/04/10	27/12/09	to 02/01/10	11/07/09	24/01/10	14/03/10
18/04/10	to 24/04/10	03/01/10	to 09/01/10	18/07/09	31/01/10	21/03/10
25/04/10	to 01/05/10	10/01/10	to 16/01/10	25/07/09	07/02/10	28/03/10
02/05/10	to 08/05/10	17/01/10	to 23/01/10	01/08/09	14/02/10	04/04/10
09/05/10	to 15/05/10	24/01/10	to 30/01/10	08/08/09	21/02/10	11/04/10
16/05/10	to 22/05/10	31/01/10	to 06/02/10	15/08/09	28/02/10	18/04/10
23/05/10	to 29/05/10	07/02/10	to 13/02/10	22/08/09	07/03/10	25/04/10

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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