

## ADDITIONAL QUESTIONS

**1. When will a full specification be available to replace those currently published in [http://www.hmrc.gov.uk/ebu/ebu\\_pave\\_ts.htm](http://www.hmrc.gov.uk/ebu/ebu_pave_ts.htm)?**

The updated Technical Specification was made available in October 2006.

**2. When will test data be available in <http://www.hmrc.gov.uk/ebu/testdata.htm>?**

Test data for Part Week Payments and KIT days is available on the website. Select "Additional Test Data"..

**3. When will these changes become part of the Payroll Standard?**

The Payroll Standard already states that software must be able to calculate and record SSP, SMP and SPP for new born children in accordance with the tech specs. It must also be able to record SAP and SPP for adopted children.

From 1<sup>st</sup> April 2007 Payroll Standard accredited software must allow users to keep a record of the KIT days taken. However, calculation of Part Week Payments will not be a requirement.

**4. Are "KIT" days counted as part of the 39 weeks?**

Yes. Keeping in Touch days, if used, are part of the woman's 39 week Maternity Pay Period (MPP). They are simply days on which a woman may do some work within her MPP under her contract of service for the employer paying her SMP with no loss of SMP.

**5. How will the Maternity Pay Period (MPP) be referred to – 6 weeks plus 33 weeks at standard rate or 6 weeks earnings related + current 20 + additional 13?**

The MPP will last for 39 weeks, 6 weeks at the earnings related rate followed by 33 weeks at the standard rate or the earnings related rate if that rate is lower than the standard rate. The MPP remains completely separate from ordinary or additional maternity leave although the provisions work together. Not all women entitled to SMP for example will take maternity leave from their employer. Some will chose to resign from their jobs but SMP will still be payable (if they qualify) for the 39 week MPP. Some women will qualify for ordinary and additional maternity leave but will have no entitlement to SMP from their employer.

**6. With regard to the "any day MPP start" change, after an employee goes on leave, there must be a time limit by which the MPP has to have commenced; I'm assuming the latest it can start would be the baby's actual Date of Birth? We need to know this so we can build the correct validation into the capturing of the "MPP start date" within our software.**

As now the latest that the MPP can start for any woman is the day after the actual date of birth.

**7. I take it that the woman cannot start her MPP before she goes on leave; again in respect to validation of the “MPP start date”, it would appear that the earliest the “MPP start date” can be set to here is the day after the employee goes on leave. Is that correct?**

The SMP legislation says that the first day of the MPP will be the day the woman says she wants her SMP to begin in the notice she gives her employer provided she has stopped work in accordance with that notice. The day her SMP starts therefore should be the same as the first day of her maternity leave. So, for example, if she usually works part time every Tuesday, Wednesday and Thursday and her last working day before her maternity leave is Thursday 4 October 2007, she will presumably have told her employer that she wants her SMP to start from Tuesday 9 October and that 9 October will be the first day of her maternity leave. However she may have told her employer that she wants her SMP to start on Friday 5 October and that 5 October will be the first day of her maternity leave. It is up to the woman to decide and tell her employer what she wants to do.

It is also necessary to remember that a woman can qualify for and receive SMP from a former employer – she may have resigned from her job having qualified for SMP. In such a case her MPP will start

\* from the 11<sup>th</sup> week before her EWC if she left her employment after the start of the 15<sup>th</sup> week before her EWC but before the start of the 11<sup>th</sup> week

\* from the day following the day on which her employment ends if she leaves her employment after the start of the 11<sup>th</sup> week but before her MPP is due the start.

**8. Whilst this change is primarily aimed at monthly paid employees, can it apply to any pay frequency (e.g. weekly, 2 weekly, four weekly); even for weekly paid employees, if the MPP runs from Sunday to Saturday for example, you’re supposed to count the number of Saturdays in the pay period to determine how much SMP is due, but it may be that the employee doesn’t get their first week’s SMP straight away because, say, their usual payment date falls in the middle of the week (in which case you could argue they would be entitled to the first several days of SMP now under the new rules). Clarification of the pay frequency issue is needed I feel.**

The regulations only make specific provision for the timing of SMP payments following a HMRC decision on the employer’s liability to pay. The employer is therefore free to pay SMP in any way he chooses except that SMP cannot be paid in kind or by way of the provision of board and lodging or services or other facilities. This frees the employer to decide for himself the best way of making statutory payments. The usual practice is for the employer to pay SMP in the same way that other payments of remuneration are made to employees within the organisation or business. But the possibility of split weeks payments of SMP is not restricted to any particular pay frequency.

Important to emphasise again however that a woman is either entitled or not entitled to SMP for whole weeks, and a week within the MPP is a period of 7 days starting with the day of the week on which the MPP starts. A weekly payment of SMP due for a "SMP week" - running for example from Tuesday through to Monday, or Thursday through to Wednesday – may be split if that fits in better with the employer's pay system.

**9. Can we have some examples of split payments with figures/dates (especially where rounding rules apply)**

See Annex A

**10. How will the calendar day payments improve the payment for ANY employees, even those paid on a calendar day basis? These employees will not be any clearer because they will be overpaid (OMP + SMP) in the current period and then under paid in the next (i.e. the weekly offsetting takes place on the first SMP payment date in the next period as the following value [OMP overpayment = Weekly Full Pay - (SMP weekly rate + OMP weekly rate), if (SMP weekly rate + OMP weekly rate) is greater than Weekly Full Pay]. The issue is NOT whether SMP is paid on a daily basis, but when it is offset. The only way to truly make SMP + OMP balance each pay period is to make SMP payable on the same days as OMP (i.e. calendar days or working days) and also to offset on a daily basis any other solution is a "half-baked" solution that doesn't really help...**

If SMP is paid for split weeks, for example 3 days at the end of month 1, and 4 days at the beginning of month 2, those part week payments can be offset against OMP due for the same number of days. The legislation says that "any contractual remuneration paid to a woman by an employer of hers in respect of a week in the maternity pay period shall go towards discharging any liability of that employer to pay SMP to her in respect of that week and any SMP paid by an employer to a woman who is an employee of his in respect of a week in the maternity pay period shall go towards discharging any liability of that employer to pay contractual remuneration to her in respect of that week.

So, provided OMP is offset against SMP due for the same week, it does not matter that the week in question is split over 2 months.

**11. Why the rounding rules cannot take care of the "rounding up" in the earlier part of the week, so that the full weekly amount is exact, by paying the amount due on the last day of the week, not the rounded rate (i.e. SMP weekly rate amount less payments already made in the same week). Why should some employee benefit and others not? SSP has managed this for years, why is SMP so different! (i.e. pay the rounded daily rate for the first 6 days and then on the 7th day, pay the remainder of the weekly payment that is still due! i.e. weekly payment less 6 x rounded daily rate)**

One rounding rule applying to any payment of SMP (including where the earnings related rate is calculated) keeps the regulation simple rather than having different rules for different situations.

**11. The very last answer from the Q&A seems to say that employers can choose to treat the working days in the SMP week that the employee returns to work, as KIT days. Can this be clarified that this is (or is not) under the employer's sole discretion, as this could be disadvantageous to the employee if the KIT days were not paid at Full Pay.** The purpose of this particular question and its answer was to illustrate that if a woman returns to work early and ends her maternity leave, that return does not actually end her MPP. An employer would have to pay such a woman any contractual pay she is due under her contract because she has ended her maternity leave. This is no different from now.

It is just that the current rules prevent SMP being paid for any week in which the woman has done any work under her contract of service for the employer paying her SMP. So, if she has returned to work and ended her maternity leave and she works in each week for the rest of her MPP, no SMP would be due.

Under the new rules a woman can legitimately work for up to 10 days in her MPP with no loss of SMP. If she returns to work early and ends her maternity leave, the employer must pay her the contractual pay she is due for the work she does. But if she has not used any KIT days, or has not used the whole 10, the employer could be reimbursed because SMP is quite properly payable because she is still within her MPP.