

Employer Helpbook for Statutory Maternity Pay

To use for employees whose babies are due on
or after 1 April 2012

Including new rates from 1 April 2012

Help and guidance

Help and guidance is available from the following sources.

The internet

For help with payroll go to www.businesslink.gov.uk/payee

For wider interactive business help go to www.businesslink.gov.uk/mynewbusiness

Online Services

For information and help using our Online Services go to www.hmrc.gov.uk/online

For more help contact the Online Services Helpdesk by:

- email helpdesk@ir-efile.gov.uk
- phone **0845 60 55 999**, or
- textphone **0845 366 7805**.

Basic PAYE Tools

The Basic PAYE Tools contains a number of calculators and most of the forms that you will need to help you run your payroll throughout the year including:

- a P11 Calculator that will work out and record your employee's tax, NICs and Student Loan deductions every payday, with a linked P32 *Employer Payment Record* that works out how much you need to pay us
- a range of other calculators to work out Student Loan deductions and statutory payments and a learning zone to help you understand these and other payroll topics
- an employer database to record your employees' details
- interactive forms such as the P11D Working Sheets.

If you use the P11 Calculator in the Basic PAYE Tools you can file online your:

- starter and leaver information P45 Part 1, P45 Part 3, P46 information and P46(Expat) information
- Employer Annual Return (if you have up to and including nine employees) on the P11 Calculator at 5 April 2013.

To download the Basic PAYE Tools, go to www.businesslink.gov.uk/basicpayetools

Employer helplines

- Employer for **less than 3 years**, phone **0845 60 70 143**.
- Employer for **3 years or more**, phone **08457 143 143**.
- If you have a hearing or speech impairment and use a textphone, phone **0845 602 1380**.

Employer helpbooks and forms

Helpbooks and forms are available to download. Go to www.businesslink.gov.uk/payeeformsandpublications

Yr laith Gymraeg

I lawrlwytho ffurllenni a llyfrynnau cymorth Cymraeg, ewch i www.hmrc.gov.uk/cymraeg/employers/emp-pack.htm Os, yn eithriadol, nad oes gennych gysylltiad i'r rhyngwrwyd, cysylltwch â'r Ganolfan Gyswllt Cymraeg ar **0845 302 1489**.

Forms and guidance in Braille, large print and audio

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

In person

We offer free workshops covering some payroll topics. These workshops are available at locations throughout the UK.

For more information:

- go to www.hmrc.gov.uk/bst or
- phone our Business Education & Support Team on **0845 603 2691**.

Employer Bulletin online

Employer Bulletins contain information and news for employers. We publish these several times a year. Go to www.businesslink.gov.uk/employerbulletin

Employer email alerts

We strongly recommend that you register to receive employer emails to prompt and direct you to:

- each new edition or news about the Basic PAYE Tools
- the Employer Bulletin
- important new information.

To register, go to

www.businesslink.gov.uk/hmrcemployeremailalerts

HM Revenue & Customs (HMRC) office

HMRC can also help you if you have a query about your PAYE scheme. HMRC contact details are available online, go to www.hmrc.gov.uk/local/employers/index.htm

Or write to HMRC at

Customer Operations Employer Office

BP4009

Chillingham House

Benton Park View

NEWCASTLE

NE98 1ZZ

Please tell us your employer reference when you contact us. You will find it on correspondence from HMRC.

Real Time Information (RTI)

We will soon be introducing Real Time Information (RTI) to improve the operation of PAYE. For more information go to www.hmrc.gov.uk/rti/employerfaqs.htm

Your rights and obligations

Your Charter explains what you can expect from us and what we expect from you. For more information go to www.hmrc.gov.uk/charter

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Overview of the SMP Scheme

Quick guide

This is a high-level overview of the SMP process. A list of frequently asked questions is also provided.

Statutory Maternity Pay (SMP)

SMP is paid to an employee by their employer in the same way as wages. SMP is paid for up to 39 weeks.

The employer will calculate the employee's entitlement to SMP. For the first six weeks it will be 90 per cent of the employee's Average Weekly Earnings (AWE). After that it will be either the weekly standard rate, or 90 per cent of the employee's AWE, whichever is less. The standard weekly rate for pay weeks commencing on or after Sunday 1 April 2012 is £135.45.

At the time this Helpbook was printed changes in the rates for paying and recovering SMP for the 2012-13 tax year were still subject to Parliamentary approval. Should Parliamentary approval not be obtained HMRC will tell you of any further changes on our website before Sunday 1 April 2012.

More detailed information including examples of how to calculate AWE can be found on pages 22 to 26.

Examples are also provided in the Learning Zone which can be found on the Basic PAYE Tools.

SMP start date

An employee can choose when to start her SMP, but SMP:

- generally cannot start before the 11th week before the week the baby is due. Or will start earlier if the baby is born earlier
- may start on any day of the week where the employee continues to be employed by you beyond the 11th week before the week the baby is due
- will start the day following the birth if the baby is born before SMP was due to start, or before the 11th week, (see page 11)
- may start earlier if the employee has a pregnancy-related absence in the four weeks before the week the baby is due (see page 20)
- must start the day after she leaves her employment if she leaves after the start of the 11th week but before the date she chose (see page 11).

More detailed information on paying SMP can be found on pages 11 and 12.

Qualifying rules

The employee must:

- have been continuously employed by the same employer in the 26 weeks going into the Qualifying Week (QW) (see page 19)
- still be pregnant at the start of the 11th week before the week the baby is due, or have had the baby by then (see page 19)
- have AWE which are not less than the lower earnings limit for payment of NICs which applies on the Saturday of the QW (see page 9)
- normally give at least 28 days notice before her SMP is due to start (see page 11).

Medical evidence for SMP

The employee must give medical evidence (usually on form MATB1 *Maternity Certificate*):

- at least 21 days after the start of the SMP pay period, or
- 21 days from the date the baby was born, if the baby is born early.

In exceptional circumstances you can extend this to 13 weeks but no more.

If the employee satisfies all of the qualifying rules, she will qualify for SMP even if she does not intend to return to work for the same employer after the baby is born.

More detailed information on medical evidence can be found on page 8.

Time limits for notice to start SMP

The employee should give their employer at least 28 days notice of when they want SMP to start. However, if this is not possible - for example, if the baby arrives early - they should tell their employer as soon as possible. The employer decides how they want to be notified and should advise the employee within 7 days of the decision being made. More detailed information on time limits can be found on page 8.

Forms you may need to use

MATB1 *Maternity Certificate*

The expectant woman 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 to the mother after the 20th week of pregnancy.

SMP1

If your employee does not meet one of the conditions in the section *Qualifying rules* then you must give this form to your employee within seven days of making your decision that she is not entitled to SMP. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier).

Form SMP1 is available to download or 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/advisers/claimforms/smp1_print.pdf

In Northern Ireland go to www.dsdni.gov.uk/smp1.pdf

Paper copies can also be ordered from www.dwp.gov.uk/publications/catalogue-of-information/how-to-order-products

SMP2 *Statutory Maternity Pay record sheet*

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

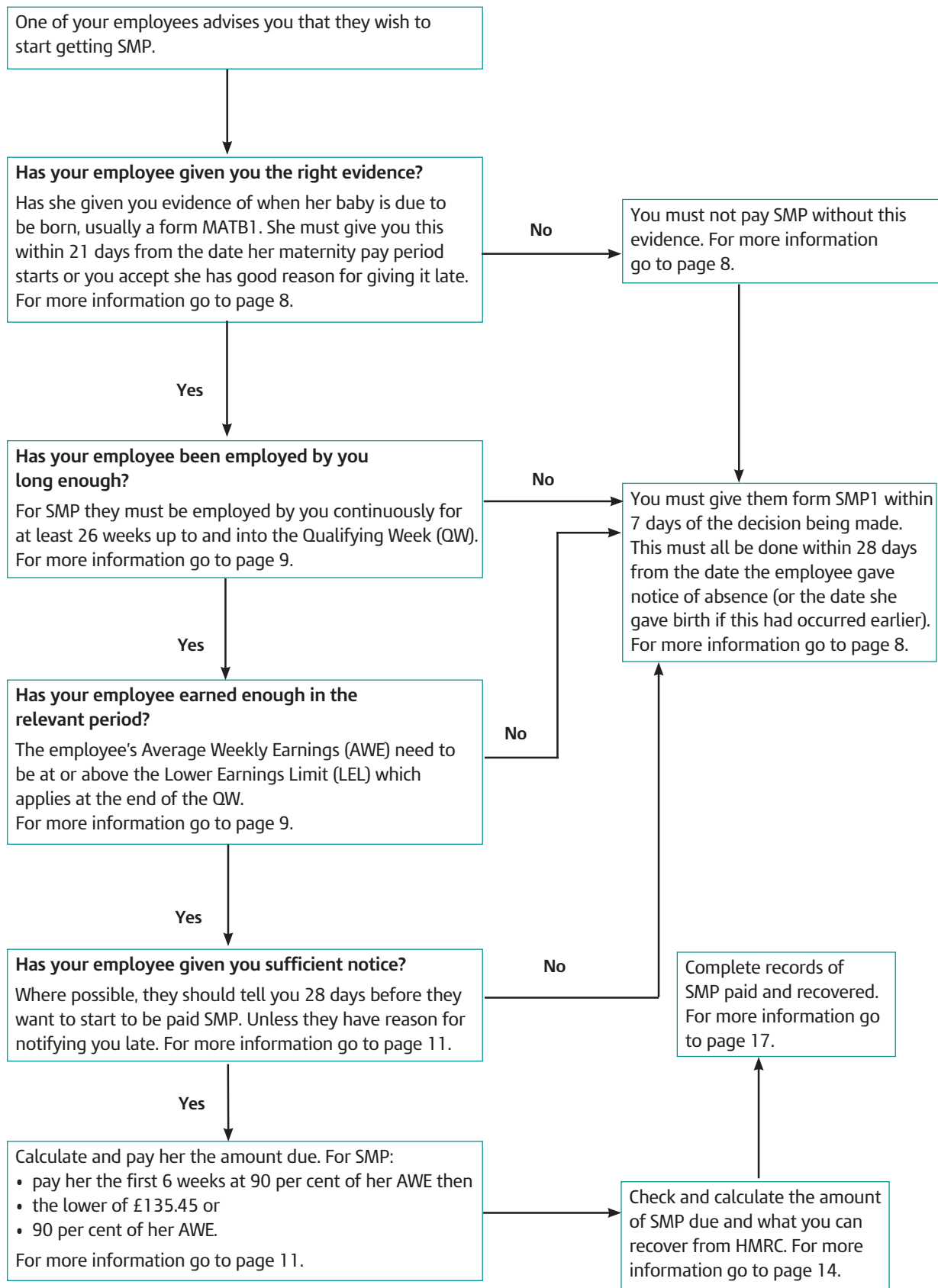
All HMRC maternity forms are available from www.hmrc.gov.uk/payee/forms-publications.htm

You can use your own version of any of the forms, except form MATB1.

Using your own versions of the maternity forms

You can produce your own computerised or paper versions of these forms (not MATB1). There is no formal approval process but you must include all the information on the approved HMRC SMP forms.

Flowchart - Operating the SMP Scheme



Terms used in this Helpbook

Statutory Maternity Pay (SMP)

This is a legal entitlement to a certain amount of pay to help a woman take time off work around the time of birth and lasts for up to 39 weeks. For more information on SMP start date see page 11. 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.

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. Maternity leave is split into:

- Ordinary Maternity Leave (OML) - the first 26 weeks of maternity leave
- Additional Maternity Leave (AML) - the second 26 weeks of maternity leave.

An employee must take two weeks (or four weeks if working in a factory) compulsory maternity leave immediately after the date the child is born and cannot work (or use a KIT day) during that time.

Employment rights

Women have a legal right to:

- paid time off for antenatal 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 pregnancy discrimination.

Dismissing someone because she is pregnant, or because they take or seek to take maternity leave, is automatically 'pregnancy discrimination'.

For more information on employment rights only (not SMP), 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**.

If there is disagreement between you and your employee about their entitlement to maternity 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 9032 1442**. Ultimately, if the dispute continues, your employee may want to take the case to an employment tribunal.

Employee

For SMP purposes 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.

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

A person who does not have an employer in the UK that is liable to pay secondary Class 1 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 SMP purposes.

Employer

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

For SMP 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 SMP then you will be responsible for making the SMP.

There has been a change to the National Insurance contributions rules for employees who move around the European Economic Area (EEA). For more information go to www.hmrc.gov.uk/nic/work/new-rules.htm

If you are not sure who is an employee and who is an employer for Statutory Maternity payments, contact the Employer Helpline on **08457 143 143**.

Qualifying Week (QW)

The Qualifying Week is the 15th week before the week the baby is due, see tables on pages 33 and 34.

Normal payday

Regulations define a 'normal payday' as either the payday specified in the contract, or the day on which they are usually paid if your employee has no contract or their contract does not specify a payday.

Frequently asked questions

How do I calculate SMP?

If your employee meets all the qualifying conditions, then for the first six weeks SMP will be 90 per cent of the employee's AWE. After that it will be either the weekly standard rate or 90 per cent of the employee's AWE, whichever is less.

The standard weekly rate is £135.45 for pay weeks commencing on or after Sunday 1 April 2012.

There is a quick and easy method to calculate SMP which is available on our website, go to

www.hmrc.gov.uk/payee/employees/statutory-pay/smp-calc.htm The SMP calculator will help you to work out if you have to pay SMP to your employee and if so how much SMP you have to pay her. It will also help you to work out how much SMP funding you can get. Basic PAYE Tools also includes a calculator.

What records should I keep?

You must keep medical evidence of the pregnancy (form MATB1 or other similar evidence), records of the payment dates and amount paid, the date the pay period began, a record of any weeks in the 39-week period when SMP wasn't paid and reasons why. Form P11 or P12 or equivalent and relevant end of year forms should also be completed. For more information see 'Keeping records' on page 17.

What do I do if my employee is not entitled to SMP?

If your employee does not meet all the qualifying conditions you do not have to pay SMP. Instead you should return the MATB1 to your employee after taking a photocopy for your records. Then complete form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier) as she may be able to claim Maternity Allowance (MA).

My employee is pregnant but did not provide medical evidence within the required time – what do I do?

You can refuse to pay SMP if your employee does not give you medical evidence of the date the baby is due by the end of the third week of what would be the Maternity Pay Period (MPP). This time limit can be extended to the end of the 13th week of her MPP if you accept the employee's reasons for not providing medical evidence earlier.

Once you have medical evidence you must provide form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier) if SMP is not due from you.

My employee has not given me medical evidence of her pregnancy – what do I do?

If your employee has not provided you with medical evidence then providing an SMP1 is difficult because you have no basis on which to do so. However, if the woman was employed by you in the 15th week before her expected week of childbirth, Jobcentre Plus need confirmation that SMP is not due from you and will be unable to pay Maternity Allowance to the woman without such confirmation. It is the woman's responsibility to provide you with the evidence to enable you to issue an SMP1 to her.

What do I need to do if the baby is born early?

If the baby is born early you may be able to pay SMP. If the baby is stillborn special rules apply. For more information see 'Stillbirth' on page 20. The Qualifying rules may be adjusted in some cases of early birth, for more information see page 20.

What if I don't have enough money to pay SMP to my employee?

You can ask your HMRC accounts office to pay you an advance of the amount you need to pay your employee's SMP. For more information see 'Advance funding' on page 15.

What do I do if my business becomes insolvent?

If you become insolvent after the start of the 15th week before the expected week of childbirth and before the start of your employee's pay period, HMRC will pay your employee's SMP. If you become insolvent during the SMP pay period, HMRC will pay your employee's SMP from the week in which you became insolvent. You should advise your employee to contact the Statutory Payment Disputes Team on **0191 22 55221**. It will also help if you, or the administrator, liquidator or other similar office, can let us know which of your employees are affected. Then we can pay them as soon as possible.

My employee has been made redundant – do I still have to pay her SMP?

Yes. If a woman has qualified for SMP from you then you are still liable to continue to pay SMP to her where she leaves your employment for whatever reason including redundancy. However, if after the baby is born your employee or ex-employee starts work for another employer who did not employ her in the QW, SMP should stop. For more information see 'Employee works for another employer' on page 14. There are special rules about making a woman redundant during pregnancy or maternity leave. For more information see www.hmrc.gov.uk/payee/employees/statutory-pay or contact Acas.

My employee has returned to work following the birth of her child and her husband is in receipt of ASPP for the remainder of her SMP pay period. However, my employee has now gone on sick leave for 4 weeks. Do I pay her SMP or SSP?

The legislation for entitlement to SMP has not changed in that, where your employee has returned to work within her MPP, and goes on sick leave, she cannot get SSP from you. You should consider paying SMP to her. Her husband's employer will continue to pay him ASPP during both her sickness and the remaining MPP period.

General information

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 Benefits Branch (IBB), 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 **028 9033 6000**.
- For Jobcentre Plus in Northern Ireland the reference is the Jobs and Benefits office.
- The Department of Employment and Learning's, publication ER16 *Maternity Rights* 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 LRA. Go to www.lra.org.uk or phone **028 9032 1442**.

More help

For more information about SMP you can:

- go to www.direct.gov.uk
- go to www.hmrc.gov.uk/payee/employees/statutory-pay
- contact any HMRC office.

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

An employee who is not entitled to SMP may be entitled to other government help. They can go to www.direct.gov.uk or 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* is available for women 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.direct.gov.uk

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.

Additional Statutory Paternity Pay (ASPP)

ASPP is an additional payment given to eligible fathers to allow them to take time off work to have more involvement with raising their child. An eligible father is a partner, civil partner or spouse of a mother who is entitled to Statutory Maternity Pay (SMP) or Maternity Allowance (MA).

Employers are responsible for administering the scheme and paying their employees the ASPP to which they are entitled. All statutory payments are treated as earnings for Income Tax and NICs purposes.

For more information see the E19 (2012) *Employer Helpbook for Ordinary and Additional Statutory Paternity Pay*.

Operating the SMP Scheme

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

Proof of pregnancy

Your employee must produce medical evidence of pregnancy to get SMP. You can allow leave without medical evidence. The medical evidence is usually the form MATB1 *Maternity Certificate*. But you can accept any document, signed by a doctor or registered midwife, that includes the date the baby is due. (The form MATB1 is signed by a doctor or registered midwife and is issued no earlier than 20 weeks before the week baby due date.)

After a maternity certificate has been given, the expected date on the maternity certificate cannot be changed. Only in exceptional cases would a doctor or midwife, following a fresh examination, issue another maternity certificate. A maternity certificate by way of replacement of an original which has been lost or mislaid, can be issued based on the original examination, in which case it shall be clearly marked duplicate.

If a woman has more than one job

If a woman has more than one job, she needs to ask one employer what other evidence they would accept to confirm the date the baby is due, as more than one maternity certificate cannot be issued showing the same expected date. 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 one employer the original MATB1 *Maternity Certificate*, 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 MATB1 *Maternity Certificate* can then be given back to the employee for use by the other employer.

Employee does not give medical evidence

If your employee has not provided you with medical evidence then providing an SMP1 is difficult because you have no basis on which to do so. However if the woman was employed by you in the 15th week before her expected week of childbirth, Jobcentre Plus need confirmation that SMP is not due from you and will be unable to pay MA to the woman without such confirmation. It is the woman's responsibility to provide you with the evidence to enable you to issue an SMP1 to her should SMP not be payable to her.

Once you have medical evidence you must provide form SMP1 to your employee if SMP is not due from you.

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. You can refuse to pay SMP if your employee does not give you medical evidence of the date the baby is due.

This time limit can be extended to the end of the 13th week of her MPP if you accept the employee's reasons for not providing medical evidence earlier.

If you do not pay SMP, you must tell your employee why on form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier).

Employee provides you with a non-UK MATB1 Maternity Certificate

If your employee provides you with a non-UK Maternity Certificate or a letter which provides the information broadly the same as the MATB1 which is the name of the UK form, for a period when they were abroad that requires translation into English, HMRC can only arrange translation where you are in dispute with your employee on their SMP entitlement, otherwise you should refer the non-UK MATB1 to an outside translator.

Has your employee been employed by you long enough?

Length of employment

To get SMP the employee must be employed by you continuously for at least 26 weeks continuing into the Qualifying Week. Count part weeks of employment as full weeks.

Some breaks in employment with you count towards the 26 weeks. An employee can still satisfy the continuous employment rule, even if she has been employed by you only for short spells during the 26-week period. For more information see 'Break in employment' on page 19.

Also if the baby is born more than 15 weeks before the week the baby is due, special rules apply. For more information see 'Baby born in or before the QW' on page 20.

Find the date the baby is due in the tables on pages 33 and 34, then read across to the latest start date for employment with you. If she started work for you after that date she does not qualify. You must give her form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier).

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 QW
- she can get SMP if you were liable to pay Class 1 NICs on her earnings throughout that period. She can still get SMP if you would have been liable to pay Class 1 NICs if her earnings had been high enough.

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 32 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 QW
- she can get SMP if
- she worked for you in the UK in the QW, **and**
 - you were liable to pay Class 1 NICs on her earnings for that week, or would have been if her earnings had been high enough.

Tables showing the week baby due, the latest start date for employment with you and the QW are on pages 33 and 34.

All other rules apply.

Leave

Employees who work outside the UK but within the EEA, may be entitled to maternity leave under UK law.

Has your employee earned enough in the relevant period?

The relevant period

To qualify for SMP, your employee must earn on average at least £107.00 (the lower earnings limit during a specific period). This is usually the eight-week period before the relevant period (see page 10). Your employee's total earnings during the relevant period are added together and divided by the number of weeks in the relevant period to work out her AWE.

Lower earnings limit (LEL)

This is the minimum level that an employee's AWE must reach in a specific period to qualify for SMP. For 2011-12 LEL is £102.00 and for 2012-13 the LEL is £107.00 weekly. If your employee always earns above this level, she will meet this condition.

What counts as earnings for working out SMP

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

- payments which are earnings for Class 1 NICs including the value of any contractual benefits which count as earnings
- 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 (SSP)
- Statutory Maternity Pay (SMP)
- Ordinary Statutory Paternity Pay (OSPP)
- Statutory Adoption Pay (SAP)
- Additional Statutory Paternity Pay (ASPP).

For help online go to Basic PAYE Tools 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 27.

How to work out the relevant period

The 'relevant period' is needed to establish the earnings to be used (see 'What counts as earnings for working out SMP' on page 9) and the number of days, weeks or months to divide those earnings by. All earnings paid in the 'relevant period' will be divided by the number of days, weeks or months in that 'relevant period'.

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

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

Date 2 the last normal payday falling not less than eight weeks before the payday at **Date 1**.

Date 2 will be the day after this payday and is the start of the 'relevant period'.

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

Regulations define a 'normal payday' as either the payday specified in the contract, or the day on which they are usually paid if they have no contract or their contract does not specify a payday.

Where the baby is born before or during the Qualifying Week, the eight-week relevant period is different.

It is the period between the last normal payday:

- on, or before, the Saturday of the actual week the baby is born, and
- falling at least eight weeks before the above.

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

Example - weekly paid employee

Employee paid every Friday

Date baby due 12/02/13

Qualifying Week 28/10/12 to 03/11/12

Payday at least 8 weeks before 02/11/12

Start of the relevant period - Date 2

Last payday on, or before, Saturday of the Qualifying Week (end of relevant period - Date 1)

| Paydays | | | | | | | | | | Total |
|----------|--------|--------|--------|--------|--------|--------|--------|--------|-------|--------|
| 07/09 | 08/09 | 14/09 | 21/09 | 28/09 | 05/10 | 12/10 | 19/10 | 26/10 | 02/11 | |
| Earnings | | | | | | | | | | 970.21 |
| - | 140.11 | 140.00 | 100.00 | 120.00 | 130.00 | 108.10 | 130.00 | 102.00 | | |

The relevant period is therefore from **8 September 2012 to 2 November 2012**

Average Weekly Earnings - total earnings £970.21 ÷ 8 = **£121.27625**

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 12/02/13

Qualifying Week 28/10/12 to 03/11/12

Payday at least 8 weeks before 31/10/12

Start of the relevant period - Date 2

Last payday on, or before, Saturday of the Qualifying Week (end of relevant period - Date 1)

| Paydays | | | Total |
|----------|----------|----------|----------|
| 31/08/12 | 01/09/12 | 31/10/12 | |
| Earnings | | | 1,409.30 |
| - | 685.75 | 723.55 | |

The relevant period is therefore **1 September 2012 to 31 October 2012**

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.

For more help and checksheets see pages 22 to 26.

Has your employee given you sufficient notice?

Pay

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

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 QW (use tables on pages 33 and 34).

You must confirm the date in writing including when you expect her back. If the employee is returning 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.

For more information go to

www.hmrc.gov.uk/pay/employees/statutory-pay

Choosing dates

Your employee has the right to choose when she wants to start SMP and leave. SMP and maternity leave cannot start before the 11th week before the week the baby is due 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 33 and 34.)

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.

Acknowledging your employee's notice for SMP and leave

You must write to the employee 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
- you expect her to return to work.

Employee does not give acceptable notice

If your employee did not give you acceptable notice and she does not have a good reason for being late, give her form SMP1 within 7 days of the decision being made.

This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

Paying SMP

Start of payment

If your employee meets all the qualifying conditions then for the first six weeks SMP will be 90 per cent of the employee's Average Weekly Earnings. After that SMP will be either the weekly standard rate or 90 per cent of the employee's Average Weekly Earnings, whichever is less.

The standard weekly rate is £135.45 for pay weeks commencing on or after Sunday 1 April 2012.

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

SMP pay weeks start with the first day of the SMP pay period, so that, for example, an 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 usual that this date will be the same day as her maternity leave starts. Both pay and leave might start earlier if your employee has:

- a premature or early birth, see page 19
- a pregnancy-related absence, see page 20.

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 (NICs), except Attachment of Earnings Orders or Deductions of Earnings Orders for the 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.

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 times off from each employer.

Employee goes abroad during the Maternity Pay Period (MPP)

If an employee leaves the UK while they are in their MPP, for example, to go on holiday or visit relatives living abroad, you are still liable to pay SMP during the MPP. As the employee will have already met the qualifying conditions, then payment should continue, even if the employee is out of the country.

Non-cash payments

You may normally pay some 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. SMP cannot be sacrificed or offset against other benefits, it must be paid in cash.

All non-pay contractual benefits must continue during statutory maternity leave. These may include any childcare vouchers, company car or mobile phone provided to the employee as part of their contract of employment.

Lump sums

If you do decide to pay the SMP as a lump sum, you and your employee could pay more NICs than if you paid it on their normal payday. See Employer Helpbook E13(2012) *Day-to-day payroll* and the CWG2(2012) *Employer Further Guide to PAYE and NICs*, 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 occupational pay but you must pay the balance of SMP due. Even if you are paying your employee occupational 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 occupational 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.

Employee is not returning to work

If your employee is not returning to work you must still pay them SMP to which they are entitled, for further information see page 14, 'When does SMP stop?'.
You cannot ask them to repay it.

Compromise agreements

If your employee stops working for you, they may have potential claims against you, for example to salary or wages which have not been paid in full. This type of thing is often dealt with by a single agreement, sometimes described as a compromise agreement.

If your employee has entitlement to SMP, you may want to include this as part of the compromise agreement. However, SMP is a legal entitlement and if she has met the qualifying conditions, she must receive that legal entitlement.

Any compromise agreement that pays her something other than her actual SMP will not satisfy her legal entitlement.

A compromise agreement may use terms such as:

- in lieu of SMP entitlement
- in recognition of SMP entitlement
- compensation for SMP entitlement

or not mention SMP entitlement at all. It may simply refer to an overall settlement figure which aims to cover all your employee's outstanding entitlements.

When terms like these are used, or there is simply an overall settlement figure, you may not have met your obligation to pay SMP.

To remove any doubt about whether you have met your requirement to pay SMP, you must make sure that if you include payment of SMP in any compromise agreement:

- it is properly calculated in accordance with your employee's entitlement and
- clearly identified as SMP in the agreement.

SMP is subject to tax and NICs and you should make sure that you make these deductions when you pay your employee.

Keeping in Touch (KIT) days

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 day's 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.

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 more information about NMW contact the free Pay and Work Rights Helpline on **0800 917 2368**.

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 and her maternity leave will come to an end. 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 ten 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, or 90 per cent of the AWE if this is lower than the standard rate.

KIT days example

If a woman works Monday to Friday, the SMP pay period is 1 March 2012 to 4 December 2012, and the SMP pay week is Wednesday to Tuesday.

A woman returns to work for six days:

- Monday to Wednesday, 27 August 2012 to 29 August 2012, and
- Monday to Wednesday, 3 September 2012 to 5 September 2012.

The SMP pay weeks for this period are:

- 22 August 2012 to 28 August 2012 (two KIT days)
- 29 August to 4 September 2012 (three KIT days)
- 5 September 2012 to 11 September 2012 (one KIT day).

She then works for five days Monday to Friday, 22 October 2012 to 26 October 2012.

The SMP pay weeks for this period are:

- 17 October 2012 to 23 October 2012 (two KIT days)
- 24 October 2012 to 30 November 2012 (two KIT days, one non-KIT day).

SMP is payable for all of the above SMP pay weeks except for the pay week 24 October 2012 to 30 October 2012 because in this week the woman has exceeded her ten KIT days.

She has used her total of ten KIT days, so SMP will not be payable for any week in which any further work is done.

Paying your employee who has 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, to check whether their earnings were high enough in each employment, see page 27.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet CWG2(2012) *Employer Further Guide to PAYE and NICs*.

If they are only entitled to 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 example' at the top of this page.

If they are entitled to more than one payment of SMP from you, they can choose to take different times off from each job without losing any SMP. This is because SMP entitlement is treated completely separately under each contract when earnings are not added together to work out NICs.

When does SMP stop?

Stopping payment

SMP stops after 39 weeks. However, there are circumstances where it might stop earlier as detailed below. If your employee returns to work before the end of her 39 weeks Maternity Pay Period see information on page 13 'Employee does some work for you'.

Employee works for another employer

If your employee works for another employer during the Maternity 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 after the baby is born your employee works for another employer during the Maternity Pay Period, you need to check whether they were employed by that employer during the QW. Tables showing these dates are on pages 33 and 34. 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 QW, you should continue to pay them SMP as normal.

If your employee is working for someone who did not employ them in the QW, you must stop paying SMP from the start of the last pay 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. You must give the employee form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *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. You must give the employee form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

It is your employee's responsibility to tell you if she is taken into legal custody. Your employee is in legal custody if she is detained, usually this means if she is arrested or in prison. She is not in legal custody if she is:

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

Employee dies

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

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 last complete tax year before the **Saturday** of the employee's QW. You can use your form P35 *Employer Annual Return* as a quick check of this.

If your annual liability for Class 1 NICs is **£45,000 or less** you are entitled to:

- 100 per cent of the SMP, and
- an additional amount as compensation for the NICs you pay on the SMP. The compensation rate for 2012-13 is 3 per cent.

Add together all payments of SMP made in the same tax months which you are entitled to recover and calculate 100 per cent plus 3 per cent of that total figure. The qualifying tax year for SMP purposes is the last complete tax year before the employee's QW.

If your annual liability for Class 1 NICs is **more than £45,000** you are entitled to 92 per cent of the SMP.

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

You can only recover the SMP payable. Any additional Occupational Maternity Pay (OMP) or any other payments you make over and above the SMP payable is not recoverable.

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 15.

If you were not an employer for the whole of 2010-11 and 2011-12

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.

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

- for babies due between 17 July 2011 and 14 July 2012, check your liability for 2010-11
- for babies due between 15 July 2012 and 13 July 2013, check your liability for 2011-12.

If you were not an employer at all in the tax year 2010-11 and 2011-12 use the checksheet on page 31.

Get help with statutory payments funding

Advance funding

If you need to provide statutory payments to an employee this should be funded from the payroll deductions you are due to send to HMRC. These deductions include PAYE tax, NICs, Student Loan deductions and Construction Industry Scheme deductions. If you don't have sufficient deductions available to cover your statutory payments, then you may be able to claim funding from HMRC to cover the balance.

The checksheet below will help you decide if you can claim advance funding.

You can ask your HMRC accounts office to pay you the balance of the amount you are entitled to.

If you obtain incorrect funding, either fraudulently or negligently, you could be liable to a penalty up to a maximum of £3,000. We will charge a penalty for each employee for whom you claimed advance funding incorrectly. We will also charge a penalty for each year for which you claimed advance funding incorrectly, if the claim spans more than one tax year. We will increase the amount of the penalty for a repeat offence.

No PAYE payment to make

If, after deducting your statutory payment(s) from your current or next PAYE payment to HMRC, you do not have a payment to make to HMRC, you must advise HMRC. If you do not, you may receive reminders or phone calls. There are several ways to advise HMRC that you do not have a payment to make:

- complete an online form, go to www.hmrc.gov.uk/payinghmrc/paye-nil.htm for details
- send HMRC a signed payslip for the correct month or quarter marked 'NIL due'
- phone HMRC on **0845 366 7816** - you will need to provide your accounts office reference number and the details of the month or quarter where no payment is due.

If you believe no payments will be due for several months please contact HMRC on **0845 366 7816**.

A quick check to see if you need advance funding

| | | | |
|---|---|---|------------------------|
| Total amount of Statutory Maternity Pay (SMP), Ordinary Statutory Paternity Pay (OSPP), Additional Statutory Paternity Pay (ASPP), Statutory Adoption Pay (SAP) and Statutory Sick Pay (SSP) you can get back | | A | £ <input type="text"/> |
| PAYE tax | B | £ | <input type="text"/> |
| National Insurance contributions (including those on SMP) | C | £ | <input type="text"/> |
| Student Loan deductions | D | £ | <input type="text"/> |
| Construction Industry Scheme deductions | E | £ | <input type="text"/> |
| Total amount you will have available in the same tax month or quarter (total of boxes B + C + D + E) = | | F | £ <input type="text"/> |

If F is less than A write to your HMRC accounts office to ask for an advance of the difference.
If you need any help phone the Employer Helpline on **08457 143 143**.

Applying for advance funding

The way that you apply for advance funding depends on whether the statutory payment is relevant to the current tax year or a previous tax year.

Statutory payment relevant to the current tax year

You can apply online at <http://www.hmrc.gov.uk/payee/employees/statutory-pay/funding.htm>

Providing the information set out in the quick check box above and ask for advance funding.

Statutory payment relevant to a previous tax year

If the SMP is relevant to a previous tax year you cannot apply online, you must write to your accounts office. You should tell them the information set out in the quick check box above and ask for advance funding. You should record the payments of SMP as normal, see 'Recording payments of SMP' on page 17.

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 HMRC accounts office.

As an employer you can make a claim within six years of the end of the tax year in which it was paid.

You should complete form SP32 to get the money back. You can print these forms from the HMRC website or go to www.hmrc.gov.uk/payee/forms-publications.htm

Send the completed form SP32 to:

HM Revenue & Customs
Multi Refunds
Room BP1001
Benton Park View
Newcastle Upon Tyne
NE98 1ZZ

Recovery and NICs Holiday

The amount of any SMP recovery should be calculated by reference to the total gross NICs figure before you take off the amount of NICs holiday you are entitled to withhold. For more information go to <http://www.hmrc.gov.uk/payee/intro/nics-holiday/calc.htm>

Keeping records

What you must keep

You must keep:

- a copy of the MATB1 certificate. If you give this back to your employee with form SMP1 keep a copy of the declaration
- a record of the payment dates and the amounts paid
- the date the pay period began
- a record of any unpaid SMP with reasons
- form SMP2 Record Sheet is available from the Orderline **08457 646 646** to help you keep a record of your payments.

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

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(2012) *Finishing the tax year up to 5 April 2012*, Helpbook E11(2012) *Starting the tax year 6 April 2012* and Helpbook E13(2012) *Day-to-Day Payroll* or go to www.hmrc.gov.uk/efiling/payee/payee_software_forms.htm

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 16.

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 make sure 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 make sure 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 HMRC Customer Operations Employer, they will tell you what to do to correct it.

See CWG2(2012) *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 it should be recorded as wages or salary not SMP.

Errors on returns and documents

You need to be aware that there is a penalty regime for errors on returns and documents. For more information see page 30.

Exceptions and checksheets for the SMP Scheme

Specific employments

Casual and short contract employees

General

There are different rules for casual (or short contract) employees and agency workers. If you are not sure whether a worker is employed by you as a casual employee or is an agency worker, 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**.

Casual employees

A casual employee is usually someone who works for an employer, as and when they are required on a series of short contracts of employment with that person. Such casual workers may also be called short contract employees. If you have to deduct PAYE tax and Class 1 NICs from the worker'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 worker's earnings, contact any HMRC office.

Supply teachers, seasonal workers or other sporadic employment

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

- the latest start date for employment with you, **and**
- up to and including the Sunday of the QW.

For SMP in this instance, a week means Sunday to Saturday, as a week means different things in different contexts. Count part weeks as full weeks. Tables showing the week baby due, the latest start date for employment with you and the QW are on pages 33 and 34.

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 19 and 20 depending on why she turned down the work.

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 any HMRC office.

Leave

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 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 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 phone your Employer Helpline on **08457 143 143**.

Leave

If you are not sure whether an agency worker is employed under a contract of employment, 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**.

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

NHS employees

Some NHS employees whose contracts are split between Strategic Health Authorities and NHS Trusts, as a result of NHS reorganisation, 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**.

However, if an employee changes from one Trust to another during the 26 weeks employment qualifying rule, the employee will not satisfy the continuous employment rule for SMP purposes, unless it is for the same NHS Trust.

For further advice email doctorsanddentists@nhsemployers.org

Exceptions to the normal conditions for SMP

Reinstatement after dismissal

If the employee did not work for you during the period you worked out using the tables on pages 33 and 34:

- 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 employee did not work for you during the period you worked out using the tables on pages 33 and 34, 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, she may still be able to get SMP.

For SMP the employee must have been continuously employed by you for at least 26 weeks by the end of the QW. Do not count the period she served in the Armed Forces as part of the 26 weeks.

All other rules apply.

Break in employment

For SMP the employee must have been continuously employed by you for at least 26 weeks by the end of the QW. To work out the latest start date for employment with you use the tables on pages 33 and 34.

Some breaks between periods of employment will not interrupt a period of continuous employment for SMP purposes. These are:

- temporary cessation of work - including short-term contract or agency workers
- public holidays - the employee can still get SMP
- sickness or injury - the employee can get SMP if the total period of incapacity is 26 weeks or less
- paternity, parental and adoption leave - if the employee took paternity leave when they were adopting a child or when a baby was born and they worked for you before and after the break she will satisfy the employment rule
- pregnancy - if your employee was not working for you because of a birth, and she worked for you before and after the break, and the break is not more than 26 weeks.

Employees with an ongoing contract of service during such breaks would remain continuously employed.

Trade Disputes or industrial action

Your employee must have been continuously employed by you for at least 26 weeks by the end of the QW.

Do not count the period they were on strike, even for one day, as this week will not count as part of the 26 weeks as your employee must have been employed for 26 weeks from the start of their employment into the QW.

All other rules for SMP apply.

Employee leaves job after the start of the QW or when the baby is born

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

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, for more information please see page 14.

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 33 and 34.

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.

Premature or early birth after QW

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 and not later than 13 weeks after the start of the SMP pay period.

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.

Baby born in or before the Qualifying Week (QW)

If the baby is born in or before the QW, there are special rules for all four of the terms and conditions.

The employee 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 relevant 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 MATB1 *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 of the start of her SMP pay period or as soon as she can but no later than 13 weeks after the start of the SMP pay period.

Continuous employment rule

If the baby is born before or during the QW, 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 per cent of the AWE for the first six weeks. Use the weekly checksheet on page 22 or the monthly checksheet on page 23 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 step 6 (weekly) or step 9 (monthly) with the amounts shown on pages 22 and 23. 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?

For pay she must give notice within 28 days of the date of birth or as soon as she can if she cannot do it within the 28 days.

For leave she should give notice as soon as reasonably practicable.

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.

Stillbirth

Your employee is entitled to SMP and maternity leave if the baby is stillborn. A stillbirth occurs if the baby is stillborn from the 24th week of pregnancy. You will need evidence before making payment. This could be a stillbirth certificate issued by the registrar or certificate/notification for the registration of a stillbirth issued by the attending midwife/doctor. The rules are the same as for a live birth.

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.

The baby dies

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

Pregnancy-related absence

If the employee 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 33 and 34, 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 any HMRC office or the Employer Helpline for advice on **08457 143 143**.

Employee becomes sick

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

If the employee returns to work within the Maternity Pay Period and then goes sick during that period, SMP is payable and not SSP.

For further information about SSP when your employee is pregnant, see E14(2012) *Employer Helpbook for Statutory Sick Pay*.

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 transferor or employer must provide will give the identities of those employees being transferred with the business.

If you are not sure if the TUPE apply:

- contact Acas, go to 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**.

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 employee 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 33 and 34.

If continuity of employment is broken and you take on the business:

- after the start of the QW, the previous employer must pay SMP to the employee if she was employed by the previous employer in the QW. The woman is still entitled to 52 weeks maternity leave
- before the start of the QW, the employee cannot get SMP. You must issue form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). The woman will be entitled to maternity leave.

All the other rules for SMP apply. The tables for working out the periods to use are on pages 33 and 34.

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 the HMRC Statutory Payments Disputes Team on **0191 22 55221**. 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.

Quick method for calculating Average Weekly Earnings (AWE)

If your employee earns:

- less than £102.00 gross a week for a baby due between 17 July 2011 and 14 July 2012, or
- less than £107.00 gross a week for a baby due between 15 July 2012 and 13 July 2013

they will not qualify for SMP. Go to the 'Does your employee earn enough?' section below.

If your employee sometimes earns more or less than £107.00 you must work out their AWE.

Use the weekly checksheet below or the monthly checksheet on page 23.

Checksheet for weekly paid – how to work out AWE

To work out AWE you must:

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

To work out AWE for employees paid in weeks or multiples of a week

1. Find the date baby is due.

2. Find the date of the Saturday in the Qualifying Week.

3. Find the date of the last normal payday on or before that Saturday.

This is the last day of the relevant period.

4. Count back to the payday at least eight weeks from the date in 3 and come forward one day, for example, if the payday is 22 June, enter 23 June.

This is the first day of the relevant 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 relevant period.

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

Does your employee earn enough?

If the amount at 6:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
- is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013

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 must give them form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 11 for 'Has your employee given you sufficient notice?'

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

This usually happens when you have to bring your employee's normal payday forward because of bank holidays at Easter or Christmas.

Follow Steps 1 to 5 of the weekly checksheet above. At Step 6 divide the figure in step 5 by the number of weeks' wages actually paid.

Employees paid in multiples of a week

Use the weekly checksheet above. At step 6 you must still divide the figure in step 5 by the number of whole weeks in the relevant period, even if your employee did not work for some of the weeks.

Employees paid monthly

Use the checksheet on page 23 to work out their AWE.

Mistimed payments

A mistimed payment occurs when the date of the actual payment of earnings is made earlier or later than the normal contractual payday.

If your employee has a contractual payday this is always the normal payday, even if you pay them early or late in a particular week or month. A mistimed payment occurs when the date of the actual payment of earnings is made earlier or later than their normal payday. It is important that the following provision is only applied to regular payments of earnings paid other than on their normal day

Follow Steps 1 to 6 of the weekly checksheet above. At Step 6 divide the figure in step 5 by the number of weeks' wages actually paid.

This type of payment should not be confused with a payroll error. For example, a mistake is made in the payroll resulting in a shortfall of pay when working out the AWE in the relevant period.

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 relevant period – worked out using the checksheet
- only include earnings from the relevant 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 Qualifying Week. | <input type="text" value="/ /"/> |
| 3. Find the date of the last normal payday on or before that Saturday. This is the last day of the relevant period. | <input type="text" value="/ /"/> |
| 4. Count back to the payday at least eight weeks from the date at 3 and come forward one day, for example, if the payday is 22 June, enter 23 June. This is the first day of the relevant 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 is not a whole number of months in the relevant period' 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. | <input type="text" value="£"/> |
| (Do not round up or down to whole pence; use the unrounded amount to decide if your employee's earnings are high enough.) | |

Does your employee earn enough?

If the amount at 9:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
- is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013

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 must give them form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate* and give the original back.

If your employee earns enough, go to page 11 for 'Has your employee given you sufficient notice?'

Rounding to the nearest whole number of months when there is not a whole number of months in the relevant period

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 Qualifying Week. | <input type="text" value="/ /"/> |
| 3. Find the date of the last payday on or before that Saturday. This is the last day of the relevant period. | <input type="text" value="/ /"/> |
| 4. Count back to the payday at least eight weeks from the date in 3 and come forward one day, for example if the payday is 22 June, enter 23 June. This is the first day of the relevant period. | <input type="text" value="/ /"/> |
| 5. Add together the earnings paid in between the dates in 4 and 3 (inclusive). | £ <input type="text"/> |
| 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"/> |
| 8. Multiply the figure in 7 by 7. | £ <input type="text"/> |

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

Does your employee earn enough?

If the amount at 8:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
- is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013

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 must give them form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your employee earns enough, go to page 11 for 'Has your employee given you sufficient notice?'

Directors

Companies incorporated after 1 October 2009

There are new regulations for companies incorporated after 1 October 2009.

They provide new Articles of Association for these companies and will:

- apply by default if other Articles are not adopted.
- allow its directors to determine a director's remuneration
 - Directors can decide what and when to pay remuneration. There is no need for a resolution of the company's shareholders at its Annual General Meeting (AGM).
 - In such cases payment of a director's fees will be regarded as earnings for the purpose of entitlement to SSP/SMP/SAP/OSPP/ASPP on the date payment was made.

Companies incorporated before 1 October 2009

The previous standard Articles, which apply in default, continue to apply. An ordinary resolution is required to determine a director's remuneration. The method of calculating directors' earnings on an annual figure (after an ordinary resolution has been passed by the shareholders) will still apply to these companies. Any payments made in anticipation of the annual vote cannot be taken into account for calculating AWE.

Paid contractually

If the director is contractually paid a regular salary, calculate their AWE like any other employee, by using the checksheet on page 22 or 23.

Paid by a determination of the directors (not a formal vote)

Calculate their AWE by using the checksheet on page 26 for directors paid by a formal vote, but use the date monies were paid instead of the date of the shareholders' resolution at the Annual General Meeting (AGM).

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 checksheet on page 22 or 23. You should only include the monies voted by formal vote if the date of the vote falls in the relevant period.

Paid only by a formal vote

If the director is paid only by a formal vote calculate their AWE using the checksheet on page 26. A formal vote usually takes place at the company's AGM 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

| | |
|--|----------------------------------|
| 1. Find the date baby is due. | <input type="text" value="/ /"/> |
| 2. Find the date of the Saturday in the Qualifying Week. | <input type="text" value="/ /"/> |
| 3. Find the date of the last formal vote on or before that Saturday. This is the last day of the relevant period. | <input type="text" value="/ /"/> |
| 4. Count back 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 date of the previous vote is 22 June, enter 23 June. This is the first day of the relevant period. | <input type="text" value="/ /"/> |
| 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.) | £ <input type="text"/> |
| 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 is not a whole number of months in the relevant period' on page 23. | <input type="text"/> |
| 7. Divide the figure in 5 by the number of whole months in 6. | £ <input type="text"/> |
| 8. Multiply the figure in 7 by 12. | £ <input type="text"/> |
| 9. Divide the figure in 8 by 52. (Do not round up or down to whole pence; use the unrounded amount to decide if your director's earnings are high enough.) | £ <input type="text"/> |

Does your director earn enough?

If the amount at 9:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
- is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013

then your director 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 must give them form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier).

Take a copy of the form MATB1 *Maternity Certificate* and give the original back to her.

If your director earns enough, go to page 11 for 'Has your employee given you sufficient notice?'

Your employee has 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(2012) *Employer Further Guide to PAYE and NICs*.

Overpayment/underpayment of earnings made during the relevant period

Where an overpayment or underpayment of wages was made within the relevant period, it is this overpaid or underpaid amount that must be included in the AWE calculation for deciding if SMP is due. For more information see page 28 to find out about pay rises.

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 relevant period. SMP cannot be sacrificed, it must be paid in full. For more information on the rules for salary sacrifice see www.hmrc.gov.uk/specialist/salary_sacrifice.htm

Contractual benefits

For the purposes of calculating AWE for SMP the calculation is based on earnings which are subject to NICs. More information is available on the treatment of childcare vouchers and other contractual benefits and expenses, go to www.hmrc.gov.uk/payereporting-az.htm

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

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.

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

If your employee has AWE of less than:

- £102.00 for babies due between 17 July 2011 and 14 July 2012, or
- £107.00 for babies due between 15 July 2012 and 13 July 2013

and they received any expense payments or benefits in kind in the relevant period, which were included in a PAYE Settlement Agreement, you must recalculate their AWE.

For more information on PAYE Settlement Agreements and whether something is liable for Class 1 NICs, see the CWG2(2012) *Employer Further Guide to PAYE and NICs*.

Some of the employee's earnings are included in a PAYE Settlement Agreement and SMP is recalculated to take account of a backdated pay rise

If you had to recalculate 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 backdated pay rise that is effective during or before the start of the relevant period which you had not included in the original calculation

you must recalculate their AWE as shown below.

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.

You take over a business in the relevant earnings period

If you:

- take over a business between the dates in 4 and 3 (inclusive) of the checksheet on page 22 or 23, and
- have worked out that the employee has been employed by you and the previous employer long enough to get SMP, see 'You take over a business' on page 21. You **must** still add together all her earnings in between the dates in 4 and 3 (inclusive) even where some of them were paid by the previous employer.

How to Recalculate your employee's AWE

Step 1

Recalculate their AWE using the earnings paid in the relevant 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:

- £102.00 for babies due between 17 July 2011 and 14 July 2012, or
- £107.00 for babies due between 15 July 2012 and 13 July 2013

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

Recalculate their AWE using the earnings paid in the relevant period as increased by the pay rise and **include** the expense payments and benefits in kind.

If the new AWE amount is at least:

- £102.00 for babies due between 17 July 2011 and 14 July 2012, or
- £107.00 for babies due between 15 July 2012 and 13 July 2013

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. If you have not already done so give the employee form SMP1 within 7 days of the decision being made. This must all be done within 28 days from the date the employee gave notice of absence (or the date she gave birth if this had occurred earlier). Take a copy of the form MATB1 *Maternity Certificate*, and give the original back to her.

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

A pay rise must not be withheld because a woman is on maternity leave. You must recalculate SMP 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 recalculate 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 recalculation means that her earnings are now high enough for her to get SMP when she could not before you should:
 - work out 90 per cent of her AWE
 - take away the standard rate of SMP
 - pay her the difference for six weeks.

If 90 per cent 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.

Your employee disagrees with your decision on their SMP entitlement

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.

As an employer you cannot ask HMRC to make a formal decision on your behalf. However, you may ask for an informal opinion with regards to your employee's entitlement to SMP.

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 Tribunals Service will consider the appeal. You both have the right to appear in person and/or be represented at the hearing.

The Tribunals 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 no 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.

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.

- 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 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.
- 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.
- The provision of 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.
- The fraudulent or negligent production of incorrect records - the penalty is up to a maximum of £3,000.
- 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.
- 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.

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

Checksheet - if you were not an employer at all in the tax year before the employee's Qualifying Week.

| | |
|--|----------------------------------|
| 1. Find the date baby is due. | <input type="text" value="/ /"/> |
| 2. Find the date of the Sunday in the Qualifying Week. | <input type="text" value="/ /"/> |
| 3. Identify the tax year in which the Sunday in the Qualifying Week falls. | <input type="text"/> |
| 4. Identify the tax month before the Sunday in the Qualifying Week. Remember that tax months run from the 6th of one month to the 5th of the following month. | <input type="text"/> |
| 5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs, and the tax month you identified at 4, inclusive. | £ <input type="text"/> |
| 6. Work out the number of tax months between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs and the tax month you identified at 4, inclusive. | <input type="text"/> |
| 7. Divide the figure in 5 by the number of months in 6. | £ <input type="text"/> |
| 8. Multiply the figure in 7 by 12. | £ <input type="text"/> |
| <p>If the figure in 8 is £45,000 or less you are entitled to:</p> <ul style="list-style-type: none"> • 100 per cent of the SMP, and • 3 per cent as compensation for the NICs you pay on the SMP. <p>If the figure in 8 is more than £45,000 you are entitled to 92 per cent of the SMP.</p> | |

Checksheet - if you were not an employer for the whole of 2011-12 and 2012-13

| | |
|--|----------------------------------|
| 1. Add together your total Class 1 NICs for the tax months in that year. | <input type="text" value="/ /"/> |
| 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. | <input type="text"/> |
| 3. Divide the figure in 1 by the figure in 2. | £ <input type="text"/> |
| 4. Multiply the figure in 3 by 12. | £ <input type="text"/> |
| <p>If the figure in 4 is £45,000 or less you are entitled to:</p> <ul style="list-style-type: none"> • 100 per cent of the SMP, and • 3 per cent as compensation for the NICs you pay on the SMP. <p>If the figure in 4 is more than £45,000 you are entitled to 92 per cent of the SMP.</p> | |

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
- Switzerland - we treat Switzerland as part of the EEA, even though Switzerland has joined neither the European Union (EU) nor the EEA. This is because of an agreement between the EU and Switzerland.
- UK, including Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

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

| Baby due between 1 April 2012 and 24 November 2012 | | | | | | |
|--|-------------|-----------------|-------------|---|---|--|
| Week baby due | | Qualifying Week | | 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 |
| 01/04/12 | to 07/04/12 | 18/12/11 | to 24/12/11 | 02/07/2011 | 15/01/2012 | 04/03/2012 |
| 08/04/12 | to 14/04/12 | 25/12/11 | to 31/12/11 | 09/07/2011 | 22/01/2012 | 11/03/2012 |
| 15/04/12 | to 21/04/12 | 01/01/12 | to 07/01/12 | 16/07/2011 | 29/01/2012 | 18/03/2012 |
| 22/04/12 | to 28/04/12 | 08/01/12 | to 14/01/12 | 23/07/2011 | 05/02/2012 | 25/03/2012 |
| 29/04/12 | to 05/05/12 | 15/01/12 | to 21/01/12 | 30/07/2011 | 12/02/2012 | 01/04/2012 |
| 06/05/12 | to 12/05/12 | 22/01/12 | to 28/01/12 | 06/08/2011 | 19/02/2012 | 08/04/2012 |
| 13/05/12 | to 19/05/12 | 29/01/12 | to 04/02/12 | 13/08/2011 | 26/02/2012 | 15/04/2012 |
| 20/05/12 | to 26/05/12 | 05/02/12 | to 11/02/12 | 20/08/2011 | 04/03/2012 | 22/04/2012 |
| 27/05/12 | to 02/06/12 | 12/02/12 | to 18/02/12 | 27/08/2011 | 11/03/2012 | 29/04/2012 |
| 03/06/12 | to 09/06/12 | 19/02/12 | to 25/02/12 | 03/09/2011 | 18/03/2012 | 06/05/2012 |
| 10/06/12 | to 16/06/12 | 26/02/12 | to 03/03/12 | 10/09/2011 | 25/03/2012 | 13/05/2012 |
| 17/06/12 | to 23/06/12 | 04/03/12 | to 10/03/12 | 17/09/2011 | 01/04/2012 | 20/05/2012 |
| 24/06/12 | to 30/06/12 | 11/03/12 | to 17/03/12 | 24/09/2011 | 08/04/2012 | 27/05/2012 |
| 01/07/12 | to 07/07/12 | 18/03/12 | to 24/03/12 | 01/10/2011 | 15/04/2012 | 03/06/2012 |
| 08/07/12 | to 14/07/12 | 25/03/12 | to 31/03/12 | 08/10/2011 | 22/04/2012 | 10/06/2012 |
| 15/07/12 | to 21/07/12 | 01/04/12 | to 07/04/12 | 15/10/2011 | 29/04/2012 | 17/06/2012 |
| 22/07/12 | to 28/07/12 | 08/04/12 | to 14/04/12 | 22/10/2011 | 06/05/2012 | 24/06/2012 |
| 29/07/12 | to 04/08/12 | 15/04/12 | to 21/04/12 | 29/10/2011 | 13/05/2012 | 01/07/2012 |
| 05/08/12 | to 11/08/12 | 22/04/12 | to 28/04/12 | 05/11/2011 | 20/05/2012 | 08/07/2012 |
| 12/08/12 | to 18/08/12 | 29/04/12 | to 05/05/12 | 12/11/2011 | 27/05/2012 | 15/07/2012 |
| 19/08/12 | to 25/08/12 | 06/05/12 | to 12/05/12 | 19/11/2011 | 03/06/2012 | 22/07/2012 |
| 26/08/12 | to 01/09/12 | 13/05/12 | to 19/05/12 | 26/11/2011 | 10/06/2012 | 29/07/2012 |
| 02/09/12 | to 08/09/12 | 20/05/12 | to 26/05/12 | 03/12/2011 | 17/06/2012 | 05/08/2012 |
| 09/09/12 | to 15/09/12 | 27/05/12 | to 02/06/12 | 10/12/2011 | 24/06/2012 | 12/08/2012 |
| 16/09/12 | to 22/09/12 | 03/06/12 | to 09/06/12 | 17/12/2011 | 01/07/2012 | 19/08/2012 |
| 23/09/12 | to 29/09/12 | 10/06/12 | to 16/06/12 | 24/12/2011 | 08/07/2012 | 26/08/2012 |
| 30/09/12 | to 06/10/12 | 17/06/12 | to 23/06/12 | 31/12/2011 | 15/07/2012 | 02/09/2012 |
| 07/10/12 | to 13/10/12 | 24/06/12 | to 30/06/12 | 07/01/2012 | 22/07/2012 | 09/09/2012 |
| 14/10/12 | to 20/10/12 | 01/07/12 | to 07/07/12 | 14/01/2012 | 29/07/2012 | 16/09/2012 |
| 21/10/12 | to 27/10/12 | 08/07/12 | to 14/07/12 | 21/01/2012 | 05/08/2012 | 23/09/2012 |
| 28/10/12 | to 03/11/12 | 15/07/12 | to 21/07/12 | 28/01/2012 | 12/08/2012 | 30/09/2012 |
| 04/11/12 | to 10/11/12 | 22/07/12 | to 28/07/12 | 04/02/2012 | 19/08/2012 | 07/10/2012 |
| 11/11/12 | to 17/11/12 | 29/07/12 | to 04/08/12 | 11/02/2012 | 26/08/2012 | 14/10/2012 |
| 18/11/12 | to 24/11/12 | 05/08/12 | to 11/08/12 | 18/02/2012 | 02/09/2012 | 21/10/2012 |

| Baby due between 25 November 2012 and 25 May 2013 | | | | | | |
|---|-------------|-----------------|-------------|---|---|--|
| Week baby due | | Qualifying Week | | 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 |
| 25/11/12 | to 01/12/12 | 12/08/12 | to 18/08/12 | 25/02/2012 | 09/09/2012 | 28/10/2012 |
| 02/12/12 | to 08/12/12 | 19/08/12 | to 25/08/12 | 03/03/2012 | 16/09/2012 | 04/11/2012 |
| 09/12/12 | to 15/12/12 | 26/08/12 | to 01/09/12 | 10/03/2012 | 23/09/2012 | 11/11/2012 |
| 16/12/12 | to 22/12/12 | 02/09/12 | to 08/09/12 | 17/03/2012 | 30/09/2012 | 18/11/2012 |
| 23/12/12 | to 29/12/12 | 09/09/12 | to 15/09/12 | 24/03/2012 | 07/10/2012 | 25/11/2012 |
| 30/12/12 | to 05/01/13 | 16/09/12 | to 22/09/12 | 31/03/2012 | 14/10/2012 | 02/12/2012 |
| 06/01/13 | to 12/01/13 | 23/09/12 | to 29/09/12 | 07/04/2012 | 21/10/2012 | 09/12/2012 |
| 13/01/13 | to 19/01/13 | 30/09/12 | to 06/10/12 | 14/04/2012 | 28/10/2012 | 16/12/2012 |
| 20/01/13 | to 26/01/13 | 07/10/12 | to 13/10/12 | 21/04/2012 | 04/11/2012 | 23/12/2012 |
| 27/01/13 | to 02/02/13 | 14/10/12 | to 20/10/12 | 28/04/2012 | 11/11/2012 | 30/12/2012 |
| 03/02/13 | to 09/02/13 | 21/10/12 | to 27/10/12 | 05/05/2012 | 18/11/2012 | 06/01/2013 |
| 10/02/13 | to 16/02/13 | 28/10/12 | to 03/11/12 | 12/05/2012 | 25/11/2012 | 13/01/2013 |
| 17/02/13 | to 23/02/13 | 04/11/12 | to 10/11/12 | 19/05/2012 | 02/12/2012 | 20/01/2013 |
| 24/02/13 | to 02/03/13 | 11/11/12 | to 17/11/12 | 26/05/2012 | 09/12/2012 | 27/01/2013 |
| 03/03/13 | to 09/03/13 | 18/11/12 | to 24/11/12 | 02/06/2012 | 16/12/2012 | 03/02/2013 |
| 10/03/13 | to 16/03/13 | 25/11/12 | to 01/12/12 | 09/06/2012 | 23/12/2012 | 10/02/2013 |
| 17/03/13 | to 23/03/13 | 02/12/12 | to 08/12/12 | 16/06/2012 | 30/12/2012 | 17/02/2013 |
| 24/03/13 | to 30/03/13 | 09/12/12 | to 15/12/12 | 23/06/2012 | 06/01/2013 | 24/02/2013 |
| 31/03/13 | to 06/04/13 | 16/12/12 | to 22/12/12 | 30/06/2012 | 13/01/2013 | 03/03/2013 |
| 07/04/13 | to 13/04/13 | 23/12/12 | to 29/12/12 | 07/07/2012 | 20/01/2013 | 10/03/2013 |
| 14/04/13 | to 20/04/13 | 30/12/12 | to 05/01/13 | 14/07/2012 | 27/01/2013 | 17/03/2013 |
| 21/04/13 | to 27/04/13 | 06/01/13 | to 12/01/13 | 21/07/2012 | 03/02/2013 | 24/03/2013 |
| 28/04/13 | to 04/05/13 | 13/01/13 | to 19/01/13 | 28/07/2012 | 10/02/2013 | 31/03/2013 |
| 05/05/13 | to 11/05/13 | 20/01/13 | to 26/01/13 | 04/08/2012 | 17/02/2013 | 07/04/2013 |
| 12/05/13 | to 18/05/13 | 27/01/13 | to 02/02/13 | 11/08/2012 | 24/02/2013 | 14/04/2013 |
| 19/05/13 | to 25/05/13 | 03/02/13 | to 09/02/13 | 18/08/2012 | 03/03/2013 | 21/04/2013 |



There are legal requirements that mean employers must comply with their obligations. At the time of writing, this guide sets out HMRC's view on how these legal requirements can be met. It will be updated annually and was last updated March 2012.

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HMRC 02/12