

# Employer Helpbook for Statutory Adoption Pay

To use for employees whose child is expected to be placed with them for adoption on or after 5 April 2009

Including new rates from 5 April 2009

## Help and further guidance

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

### The Internet

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

### Your Employer CD-ROM

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

#### The CD-ROM has:

- a P11 Calculator that will work out and record your employees' tax, NICs and Student Loan deductions every pay day with a linked P32 record of deductions that works out what you need to pay us
- a range of other calculators that work out car and car fuel benefit, statutory payments and Student Loan deductions.

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

#### There is also:

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

### Employer helpbooks

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

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

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

- CWG2(2009) *Employer Further Guide to PAYE and NICs*
- CWG5(2009) *Class 1A NICs on benefits in kind*
- 480(2009) *Expenses and Benefits - A tax guide*
- 490 *Employee travel - A tax and NICs guide for employers.*

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

Or you can order copies from the Employer Orderline:

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

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

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

### Yr Iaith Gymraeg

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

### By phone - employer helplines

New employers and employers with less than three years payroll experience

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

Employers with more than three years payroll experience

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

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

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

A list of helplines and opening hours is available:

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

### Your HM Revenue & Customs office

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

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

### In person

We can help you with many payroll topics, explaining:

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

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

### Online Services

For information about our online services go to [www.hmrc.gov.uk/online](http://www.hmrc.gov.uk/online)

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

- email [helpdesk@ir-efile.gov.uk](mailto:helpdesk@ir-efile.gov.uk)
- phone **08456 055 999** open seven days a week  
08.00 - 20.00.

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## Information

### Further Help

For more information about Statutory Adoption Pay (SAP), you can:

- contact any HMRC office for advice about entitlement to SAP and what they can do if they disagree with your decision not to pay SAP
- contact any Advisory, Conciliation and Arbitration Service (Acas) at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.
- get advice on employment law, go to [www.direct.gov.uk/workandfamilies](http://www.direct.gov.uk/workandfamilies)

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 SAP may be entitled to other government help. Please tell them to contact their adoption agency.

### Statutory Adoption Pay (SAP) calculators

There is an easy and quick way to calculate SAP. The SAP calculator is available on our website, go to [www.hmrc.gov.uk/calcs/stat-calcs.htm](http://www.hmrc.gov.uk/calcs/stat-calcs.htm)

The calculator will help you to work out if your employee is entitled to SAP and, if so, provide a schedule of the payments that you should make. It will also help you work out if you are entitled to recover any of the SAP you have paid to your employees in each month.

There is a list of frequently asked questions on SAP on our website, go to [www.hmrc.gov.uk/employers/sap-faq.htm](http://www.hmrc.gov.uk/employers/sap-faq.htm)

Your CD ROM also includes a calculator, go to 'calculators' in the main menu.

There is also a learning zone in your CD ROM which will take you step by step through the process of paying and recovering SAP.

### Adoption leave and pay

The Department for Business, Enterprise and Regulatory Reform (BERR) gives information on adoption pay and leave, go to [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies)

Free confidential advice on employment law is available from the Advisory, Conciliation and Arbitration Service (Acas), go to [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47**.

### 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 SAP and adoption leave schemes
- guidance on employment law and adoption leave is produced by the Department for Employment and Learning, see the phone book for contact details or go to [www.delni.gov.uk](http://www.delni.gov.uk)
- if your employee lives in the Republic of Ireland please contact the Employer Helpline on **08457 143 143**
- guidance on employment law is covered by the Labour Relations Agency (LRA). For more information go to [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

Throughout this Helpbook further references to either Advisory, Conciliation and Arbitration Service or Labour Relations Agency will be abbreviated to Acas or LRA.

### 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 SAP records.

## Penalties

Legislation provides that employers failing or refusing to operate the SAP scheme correctly can incur penalties. Like those in place for PAYE & NICs, these penalties are civil (not criminal). The penalties cover the following:

- A refusal by you to allow access to your records or a failure to comply with a formal information notice both of which attract a maximum penalty of £300 and £60 for each day the failure continues.
- A failure to keep records could make you liable to a penalty up to a maximum of £3,000.
- Should you provide incorrect information or documents either fraudulently or negligently in response to a formal information notice the penalty is up to a maximum of £3,000.
- If you fraudulently or negligently produce incorrect records the penalty is up to a maximum of £3,000.
- Any failure by you to give your employee the required information could make you liable to a penalty up to a maximum of £300 and £60 for each day the failure continues.
- The provision of incorrect information either fraudulently or negligently to your employee, could make you liable to a penalty up to a maximum of £3,000.
- The refusal or repeated refusal or failure by you to pay SAP to your employee or the payment of an incorrect amount of SAP due to either fraud or negligence could make you liable to a penalty up to a maximum of £3,000.
- Obtaining either fraudulently or negligently incorrect funding could make you liable to a penalty up to a maximum of £3,000.
- Anyone who fraudulently or negligently makes an incorrect statement or declaration to establish entitlement to Statutory Payments could be liable to a penalty up to a maximum of £3,000.

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

Depending on the penalty type any appeal against a penalty raised by an officer of HMRC will be heard by an independent tribunal. Any appeal against a penalty determined by the tribunal (on a question of law or against an amount) will be to the Upper Tier Tribunal. The outcome of any appeal could see the penalty upheld, varied or dismissed.

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

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

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

## Employment rights

Employees who exercise their rights to SAP and adoption leave have a legal right to:

- protection against unfair treatment or dismissal, and
- return to work.

The Department for Business, Enterprise and Regulatory Reform (BERR) guidance gives information about adoption leave and pay. Interactive information is available, go to [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies)

For further information on employment rights, contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

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

### Pay

As you work through the terms and conditions, if you decide that your employee is not entitled to SAP you will be told to issue a form SAP1. This will explain to your employee why you cannot pay SAP and what they need to do to get other Government help. It is important that you give them this form as soon as possible to help them with their claim. If your employee disagrees they can ask us to make a formal decision. If this happens we will give you more information at the time. See page 32 for further information.

### Leave

If there is a disagreement between you and your employee about their entitlement to leave, you will want first to discuss it together. You will probably also find it helpful to contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://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.

For further information relating to adoption leave go to [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies)

## Terms and conditions used in this Helpbook

### Who is an employee and who is an employer?

For statutory payments an **employee** is a person whose earnings attract a liability for employer's secondary Class 1 National Insurance contributions (NICs), or would but for your employee's age or level of their earnings. Employees include office holders, for example, police officers, Members of Parliament, the judiciary and some company directors.

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

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

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

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

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

### Statutory Adoption Pay (SAP)

This is a legal entitlement to a certain amount of pay to help an employee (male or female) adopting a child take time off work around the time the child is placed with them. It is available to:

- individuals adopting a child on their own, or
- one member of a couple adopting a child together.

It lasts for up to 39 weeks.

The following terms are used when adopting a child:

- **Adopter** - means the person(s) who are going to adopt a child. They may be going to adopt a child on their own, or with their partner.
- **Matched/Matching** - means the adoption agency has decided that a person is suitable to adopt a particular child. The adoptive parent(s) may be given a 'matching certificate' letter from the agency.
- **Matching date** - means the date when the adoption agency told the employee that they had been matched with a child.
- **Matching week** - means the week when the adoption agency told the employee that they had been matched with a child.
- **Placed** - means the child starts living with the person permanently with a view to being formally adopted in the future. They may have stayed with them before this date.

- **Official Notification** - is what a person adopting a child from abroad needs from the relevant domestic authority to confirm that they are a suitable adoptive parent.
- **Declaration of entitlement** - is a form (SC6) on which an employee who is adopting a child from abroad with their partner must declare they are not receiving or have applied for Statutory Paternity Pay (SPP).
- **Lower Earnings Limit (LEL)** for National Insurance purposes is shown as an amount of money. The LEL is the minimum amount of earnings that an employee needs to qualify for benefits. It is also the level that employees Average Weekly Earnings (AWE) must reach in a specific period for them to qualify for SAP. For 2009-10 year the LEL is £95.00.

### Adoption leave

This is available to:

- individuals adopting a child on their own, or
- one member of a couple adopting a child together.

The adopter is allowed to take up to 26 weeks ordinary leave and 26 weeks additional leave but only the first 39 weeks are covered by SAP. The adopter is entitled to 52 weeks statutory adoption leave regardless of any entitlement to SAP.

For further information relating to adoption leave go to [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies)

### Civil partners

For SAP entitlement the same rules apply to married couples and civil partners.

## New from 5 April 2009

### SAP rates

Pay the lower of:

- £123.06, or
- 90% of AWE for pay weeks commencing on or after 5 April 2009, the first Sunday in April.

At the time this Helpbook was printed, changes in the rates for paying and recovering SAP for the 2009-2010 tax year were still subject to Parliamentary approval. Should Parliamentary approval not be obtained, HMRC will inform you of any further changes on our website before 6 April 2009.

### New penalty regime for errors on returns and documents

You need to be aware that there is a new penalty regime for errors on returns and documents. It applies to tax returns or other documents for tax periods starting on or after 1 April 2008 that are due to be filed on or after 1 April 2009. For more information on penalties see page 4.

### Couples adopting together

If your employee is adopting the child with their partner, the couple must choose who gets the SAP and adoption leave and who gets Statutory Paternity Pay (SPP) and paternity leave. For SPP see the E19, *Employer Helpbook for Statutory Paternity Pay*. Your employee will give you the evidence of matching or Official Notification and form SC6.

There is more information about evidence on page 10.

### Foster carers

SAP and adoption leave may be available to foster carers who go on to adopt a child if they satisfy the qualifying conditions:

- the adopter must have been matched with the child for adoption by an adoption agency, and
- the child will be placed with them for adoption.

If the adopters apply directly to the courts for an adoption order, they will not be eligible for Statutory Adoption Pay or leave.

### Step parents

Step parents who are adopting a child but have not been matched by an adoption agency will not usually qualify for SAP. However, the partner of an adopter may be entitled to SPP and paternity leave.

Further information relating to adoptions by foster carers and step parents is available at [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies) and [www.direct.gov.uk/workandfamilies](http://www.direct.gov.uk/workandfamilies)

### Adoption leave for employees adopting a child expected to be placed with them on or after 5 October 2008

The Government changed the rules on adoption leave for employees adopting a child expected to be placed with them on or after 5 October 2008. In view of these changes employees are now entitled to the benefit of the same non-pay contractual terms and conditions during Additional Adoption Leave as those to which they are entitled to during Ordinary Adoption Leave. For more information go to [www.businesslink.co.uk/workandfamilies](http://www.businesslink.co.uk/workandfamilies) or in Northern Ireland contact the LRA, at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

## Specific employments

### Casual and short contract employees

#### General

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

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

Casual employees are also known as short contract employees.

#### Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual employee's earnings, then you will have to pay them SAP if they satisfy all the qualifying conditions.

If you are not sure whether you have to deduct PAYE tax and Class 1 NICs from the employee's earnings contact your local HMRC office.

#### Leave

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

### Agency workers

#### Pay

Agency workers can be treated as employees for PAYE 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 their earnings were high enough then you will have to pay them SAP 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 agency worker's earnings contact your local HMRC office.

#### Leave

Agency workers who are not employed under a contract of employment are not entitled to statutory adoption leave. If you are not sure whether a worker is employed under a contract of employment contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### Mariners

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

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

If you are not sure whether the mariner can get leave or not contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

## Forms you may need to use

All the adoption forms are available from the Employer CD-ROM or our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)  
Call the Orderline on **08457 646 646** for a paper version.

### **SAP1 *Why I cannot pay you SAP***

Use this form to tell your employee that they are not entitled to Statutory Adoption Pay.

### **SAP2 *Statutory Adoption Pay record sheet***

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

### **SC6 *Evidence of entitlement to Statutory Adoption Pay and adoption leave when adopting from abroad – declaration of entitlement***

Use this form to tell your employee the terms and conditions relating to entitlement to SAP when they are adopting the child jointly with their partner to declare that they are not also applying for Statutory Paternity Pay (SPP). The employee should give it to you as part of the evidence required for SAP.

## Using your own versions of the adoption forms

You can produce your own computerised or paper versions of these forms. There is no formal approval process but they must include all the information detailed below.

### **SAP1 *Why I cannot pay you SAP***

It must include:

- your employee's name, address and National Insurance number
- the reason why you cannot pay SAP, or
- if you have made some payment, but don't think you should make any more
  - the date you should stop paying
  - the reason why you should stop paying.

It will help your employee if you also include information about:

- what they should do if they disagree with your decision
- contacting the adoption agency to find out about other Government help.

### **SAP2 *Statutory Adoption Pay record sheet***

It must include:

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

You may also find it helpful to record:

- the date your employee was told by the adoption agency that they had been matched with a child
- the date the child was expected to be placed
- the date the child was placed
- the date the employee told you they planned to start their adoption leave
- the date they planned to start their adoption leave
- if the employee changed their mind, when they told you the new date they wanted to start their adoption leave, and the new date.

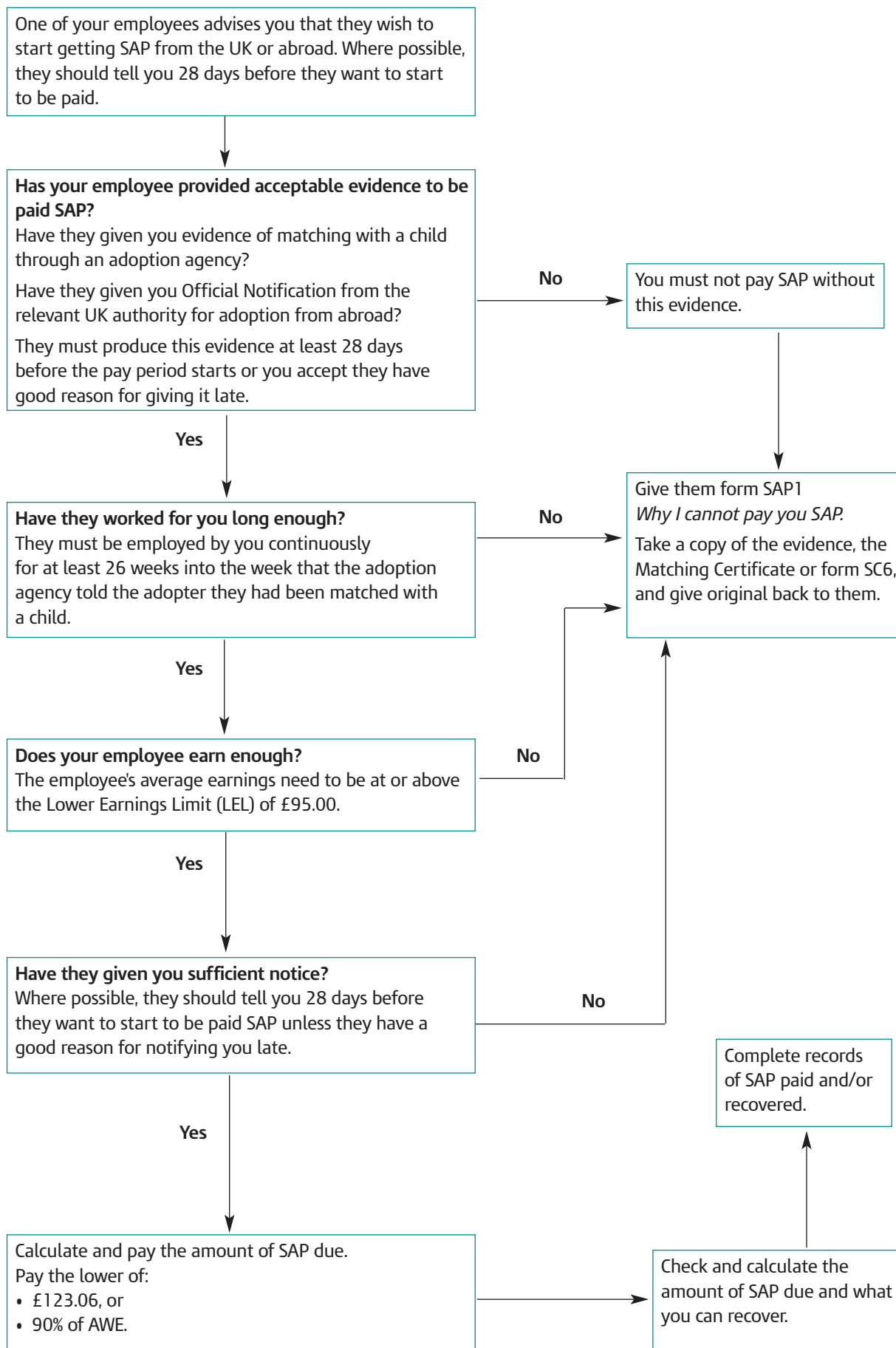
### **SC6 *Evidence of entitlement to Statutory Adoption Pay and adoption leave when adopting from abroad – declaration of entitlement***

It must include:

- a declaration that they and their partner, are adopting a child together
- the employee's name.

The employee should give you all the relevant information if they are adopting a child jointly with their partner to declare that they are not also applying for Statutory Paternity Pay (SPP). The employee should give it to you as part of the evidence required for SAP.

## Flowchart - Operating the SAP scheme



## Evidence for entitlement

### Evidence of matching

Your employee must give you documentary evidence that they are adopting a child through an adoption agency to get SAP. This may be a letter from the agency confirming that the adopter/employee has been matched with a child or a matching certificate for SAP purposes.

Check that the evidence you are given shows:

- the name and address of the adoption agency
- name and address of your employee
- the date the child is expected to be placed for adoption, or the date the child was placed for adoption, and
- the date the employee was told by the adoption agency that they had been matched with a child.

You must not pay SAP without acceptable evidence. If you are concerned about the evidence your employee has given you contact the Employer Helpline on **08457 143 143** for advice.

#### Employee gives evidence

Go to 'Has your employee worked for you long enough?' on this page.

#### Employee does not give evidence

Tell your employee that you cannot pay them without the evidence and they will need a good reason if they give it to you late.

### Time limits

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

Please note that sometimes there is very little time between the date the adoption agency tells your employee that they have been matched with a child and the date the child is placed with them. If your employee is late giving you evidence because of this you must accept it.

## Has your employee worked for you long enough?

### Length of employment

To qualify for SAP and adoption leave your employee must be employed by you continuously for at least 26 weeks continuing into the week they were told by the adoption agency that they had been matched with a child. Count part weeks of employment as full weeks.

Find the date when the adoption agency told them that they had been matched with a child in the table on page 38. Then read across to the latest start date for employment with you. If they started work after that date they don't qualify give them form SAP1 *Why I cannot pay you SAP*, take a copy of the evidence they got from the adoption agency, and give the original back to them.

### Employee works abroad

#### Statutory Adoption Pay (SAP)

Where your employee works for you outside the UK length of employment is from:

- the latest start date for employment with you, and
- up to and including the Sunday of the week when the adoption agency told them that they had been matched with a child. Tables showing the latest start dates for employment with you are on page 38.

They can still get SAP if you would have been liable to pay Class 1 NICs had their earnings been high enough.

If you weren't liable to pay Class 1 NICs throughout the period and they worked for you in the European Economic Area (EEA), (for a list of EEA countries see page 37), they may still be able to get SAP.

Where they work for you **within the EEA** from:

- the latest start date for employment with you, and
- up to and including the Sunday of the week when the adoption agency told them that they had been matched with a child

they can get SAP if:

- they worked for you in the week when the adoption agency told them that they had been matched with a child, and
- you were liable to pay Class 1 NICs on their earnings for that week.

Tables showing the latest start dates for employment with you are on page 38.

All the other rules apply.

#### Leave

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

For more information go to

[www.businesslink.gov.uk/workandfamilies](http://www.businesslink.gov.uk/workandfamilies)

## Agency Workers

You may not have placed agency workers with clients in every week. If the agency worker was placed with clients by you in every week they can get SAP. If they were not placed with clients by you in every week, and particularly in the Sunday of the week when the adoption agency told them that they had been matched with a child, you need to check why not. If you did not have work to offer them they can still get SAP.

If you offered them work and they turned it down, they may still be able to get SAP. If they did not work because they were on paid leave they can get SAP.

If they did not work because they were sick, then to get SAP they must do some more work for a client through you within 26 weeks of their first day of sickness.

If they did not work in the Sunday of the week when the adoption agency told them that they had been matched with a child, then to get SAP they must do some more work for a client through you before starting their adoption absence.

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

Casual employees, supply teachers, seasonal workers and other sporadic employees who work and are employed by you as and when you need them may not have worked for you in every week.

If they have worked for you in every week they will have satisfied the employment condition. If they did not work for you in every week you need to check why not.

They can still get SAP if:

- they did not work because they were on paid leave
- you did not have work to offer them.

If you offered them work and they turned it down, they may still be able to get SAP, depending on why they turned the work down.

Check the relevant paragraph in the section on pages 23 and 24 depending on why they turned the work down.

## Leave - general

### Agency workers

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

### Supply teachers

Supply teachers who work under a contract of employment can get adoption leave. There are special rules on how long they must have worked for you. See 'Leave - how long has your employee worked for you?'

### Casual employees, seasonal workers or other sporadic employment

Casual employees, seasonal workers and other employees who work under a contract of employment, as and when you need them, usually get adoption leave, but there are special rules on how long they must have worked for you. See 'Leave - how long has your employee worked for you?' below.

## Leave - how long has your employee worked for you?

They 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 week when the adoption agency told them they had been matched with a child.

A week in this instance means Sunday to Saturday. Count part weeks as full weeks. Tables showing the latest start dates for employment with you are on page 38.

If they did work for you in every week they can get adoption leave. If they didn't work for you in every week you need to check why not.

If the contract does not continue, they can still get adoption leave if:

- they are sick or injured and are then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily
- they aren't working but their contract is regarded as continuing for some purposes, by arrangement or custom
- they aren't working for some other reason specified on pages 23 and 24.

If you need more information about this please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**, or seek independent legal advice.

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

### Leave

To qualify for adoption leave, your employee should tell you no more than seven days after they are matched with a child, for more information go to [www.businesslink.gov.uk/workandfamilies](http://www.businesslink.gov.uk/workandfamilies)

### Pay

Where possible your employee should tell you 28 days before they want to start to be paid. But in practice there is often very little time between the dates they are matched with the child and the child is placed. If your employee is late giving you notice because of this you must accept it.

You can ask them to tell you in writing. You must confirm the date you expect them back, in writing, within 28 days of getting their notice. (See sample Text A and B on page 13 to include in your letter.)

Notice can be given:

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

## Choosing dates

Your employee has the right to choose when they want to start their adoption pay and leave. They can start their leave and pay on the date the child is placed with them for adoption or a pre-arranged date no earlier than 14 days before the expected date of placement.

You should discuss and agree a suitable start date with your employee. They may have had good reasons why they could not give you proper notice, and if so you should accept them. If not, you are entitled to insist on a notice period which suits you but you cannot in any circumstances delay the start of leave beyond the date the child is expected to be placed.

If your employee doesn't choose to take their full leave entitlement they must give you 28 days notice of when they intend to start work again.

### Change of mind

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

## Returning after adoption leave

If your employee is returning to work earlier than previously planned or later than the previously agreed date they **must** give you eight weeks notice of when they intend to start work again.

## Employee does not give acceptable notice

### Pay and Leave

If your employee didn't give you acceptable notice you can delay the start of leave and the pay period until you have had acceptable notice of their intended dates, but you cannot delay the start of leave beyond the date the child is placed. Employers should allow sufficient flexibility of notice because of the possible differences between the expected date of placement and the actual date of placement. If your employee does not have good reason why they didn't give acceptable notice, give them form SAP1, *Why I cannot pay you SAP*.

Take a copy of the evidence they got from their adoption agency and give them the original back.

For more information on adoption leave go to [www.businesslink.gov.uk/workandfamilies](http://www.businesslink.gov.uk/workandfamilies)

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

You must write to your employee within 28 days of the date they told you they want to start their Statutory Adoption Leave, to confirm:

- the date they intend to stop work
- the date you expect them to return to work.

These letters are available on the Employer CD-ROM.

Unless you have already been informed otherwise, you should assume your employee is taking their full 52 weeks adoption leave.

Use 'Text A' if your employee is entitled to SAP, and 'Text B' if your employee is not entitled to SAP.

### Text A

As we discussed, you are eligible for **39 weeks, Statutory Adoption Pay (SAP)**. Your adoption pay will be £ (insert amount) from (insert date) to (insert date).

You are also entitled to 52 weeks adoption leave. Given your chosen start date of (insert date) your adoption leave will end on (insert date).

If you want to change the date your adoption leave starts, you must, where possible, tell me at least 28 days before your proposed new start date or 28 days before (insert leave start date), whichever is sooner.

If you decide to return to work before (insert date leave ends), you must give me at least eight weeks notice.

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

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

### Text B

As we discussed, you are not eligible for **Statutory Adoption Pay (SAP)**.

The form SAP1 (enclosed) explains why you do not qualify for SAP. You should contact your adoption agency to find out if you can get any other help.

However, you are entitled to 52 weeks adoption leave. Given your chosen start date of (insert date) your adoption leave will end on (insert date).

If you want to change the date your adoption leave starts you must, if possible, tell me at least 28 days before your proposed new start date or 28 days before (insert leave start date), whichever is sooner.

If you decide to return to work before (insert date leave ends), you must give me at least eight weeks notice.

If you decide not to return to work, you must still give me proper notice.

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

## Does your employee earn enough?

### What counts as earnings

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

Include:

- Payments which are earnings for Class 1 National Insurance contributions (NICs). (Your employee does not have to have paid NICs, for details see Terms and conditions on page 5.)
- All earnings paid in the period, including money earned outside the period, such as holiday pay, overtime, bonuses and backdated pay rises.
- Statutory Sick Pay.
- Statutory Maternity Pay.
- Statutory Paternity Pay.
- Statutory Adoption Pay.

Statutory Adoption Pay (SAP) depends on your employee's AWE in a set period. See the quick method on page 16 to find out if they qualify. But if you are in any doubt, or your employee disagrees with your decision, you must work through the detailed check on pages 16 and 17.

When you work out how you pay, look at when the pay week began.

For help on screen go to

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

Where a salary sacrifice arrangement is in place, see page 20.



## Quick method for calculating Average Weekly Earnings (AWE)

The adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010.

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

If your employee sometimes earns more or less than £95.00, you must work out their AWE. Use the weekly checksheet below or the monthly checksheet on page 17.

### Checksheet for weekly paid - how to work out AWE

To work out AWE you must:

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

To work out AWE for employees paid in multiples of a week, for example, weekly, fortnightly or other multiple weekly.

1. Enter the date when the adoption agency told the adopter they had been matched with a child.

2. Find the date of the Saturday on or after the date at 1.

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

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

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

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

### Your employee earns enough?

If the amount at 6:

- is at least £90.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- is at least £95.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SAP. You should give them form SAP1 *Why I cannot pay you SAP*.

Take a copy of the evidence they got from the adoption agency and give the original back to them.

If your employee earns enough, go to page 12 for 'When should your employee give you dates for pay and leave?'

## Checksheet for monthly paid – how to work out AWE

To work out AWE you must:

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

To work out AWE for employees paid monthly	
1. Enter the date when the adoption agency told the adopter they had been matched with a child.	<input type="text" value="/ /"/>
2. Find the date of the Saturday on or after the date at 1.	<input type="text" value="/ /"/>
3. Find the date of the last normal pay day on or before that Saturday. <b>This is the last day of the set period.</b>	<input type="text" value="/ /"/>
4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example if the pay day is 22 June, enter 23 June. <b>This is the first day of the set period.</b>	<input type="text" value="/ /"/>
5. Add together the earnings in between the dates at 4 and 3 (inclusive).	£ <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 the paragraph below 'Rounding to the nearest whole month when there are not a whole number of months in the set period'.	<input type="text"/>
7. Divide the figure in 5 by the number of whole months in 6.	£ <input type="text"/>
8. Multiply the figure at 7 by 12.	£ <input type="text"/>
9. Divide the figure in 8 by 52. ( <b>You don't round up or down</b> to whole pence here, you'll do this when you come to the 'amounts to pay'.)	£ <input type="text"/>

### Your employee earns enough?

If the amount at 9:

- is at least £90.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
  - is at least £95.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SAP. You should give them form SAP1 *Why I cannot pay you SAP*.

Take a copy of the evidence they got from the adoption agency and give the original back to them.

If your employee earns enough, go to page 12 for 'When should your employee give you dates for pay and leave?'

### Rounding to the nearest whole month when there are not a whole number of months in the set period

For monthly paid employees, where there is a part month payment in the set period between the dates at 4 and 3 using the checksheet above.

When you get to Step 6 of the monthly checksheet, 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 employee in a regular pay pattern.**

1. Enter the date when the adoption agency told the adopter that they had been matched with a child.
2. Find the first Saturday on or after the date in 1.
3. Find the date of the last pay day on or before that Saturday.  
**This is the last day of the set period.**
4. Count back to the pay day at least eight weeks from the date in 3 and come forward one day, for example, 22 June, enter 23 June.  
**This is the first day of the set period.**
5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).
6. Work out the number of days between the dates in 4 and 3 (inclusive).
7. Divide the figure in 5 by the number of days in 6.
8. Multiply the figure in 7 by 7.  
**(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

### Your employee earns enough?

If the amount at 8:

- is at least £90.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- is at least £95.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SAP. You should give them form SAP1 *Why I cannot pay you SAP*.

Take a copy of the evidence they got from the adoption agency and give the original back to them.

If your employee earns enough, go to page 12 for 'When should your employee give you dates for pay and leave?'

## Directors

### Paid contractually

If the director is contractually paid a regular salary calculate their AWE like any other employee by using the checksheets on pages 16 and 17.

### Paid both contractually and by a formal vote

A director who is paid contractually may also be paid a bonus or fees by a formal vote. You must still calculate their AWE using the checksheets on pages 16 and 17. You should only include the monies voted by formal vote if the date of the vote falls in the set period.

### Directors paid only by a formal vote

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

### Monies drawn in anticipation of a formal vote

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

## Checksheet for directors paid only by a formal vote

To work out AWE for directors paid only by a formal vote.

1. Enter the date when the adoption agency told the adopter that they had been matched with a child.
2. Find the first Saturday on or after the date in 1.
3. Find the date of the last formal vote on or before that Saturday.  
**This is the last day of the set period.**
4. Count back to the pay day at least eight weeks from the date at 3 until the date of the previous formal vote and come forward one day, for example, 22 June, enter 23 June. **This is the first day of the set period.**
5. Add together money voted between the dates in 4 and 3 (inclusive).  
(Do not include any money drawn in anticipation of the vote.)
6. Work out how many whole months there are between the dates at 4 and 3 (inclusive). If there aren't a whole number of months see 'Rounding to the nearest whole month when there are not a whole number of months in the set period' on page 17.
7. Divide the figure at 5 by the number of whole months in 6.
8. Multiply the figure at 7 by 12.
9. Divide the figure in 8 by 52. (Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)

## Your employee earns enough?

If the amount at 9:

- is at least £90.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- is at least £95.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, they don't qualify for SAP. You should give them form SAP1 *Why I cannot pay you SAP*.

Take a copy of the evidence they got from the adoption agency and give the original back to them.

If your employee earns enough, go to page 12 for 'When should your employee give you dates for pay and leave?'

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

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

Follow Steps 1 to 5 of the weekly checksheet on Page 16. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

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

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

Follow Steps 1 to 5 of the weekly checksheet on page 16. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

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

### Employees paid in multiples of a week

Use the weekly checksheet on page 16. At Step 6 you must still divide the figure in Step 5 by the number of whole weeks in the set period, even if your employee did not work for some of the weeks.

### Employees paid monthly

Use the checksheet on page 17 to work out their AWE.

## You take over a business in the set earnings period

If you:

- take over a business between the dates in Steps 4 and 3 (inclusive) of the checksheets on pages 16 and 17, or
- have worked out that the employee has worked for you and the previous employer long enough to get Statutory Adoption Pay (SAP), see 'You take over a business' on page 24.

You **must** still add together all their earnings in between the dates in Steps 4 and 3 (inclusive) even where some of them were paid by the previous employer.

## Your employee has more than one job with you

Your employee could have more than one job with you.

If you normally add all your employee's earnings together to work out Class 1 National Insurance contributions (NICs) you would do the same to work out the employee's AWE, and the employee can only get one lot of SAP.

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 SAP.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet CWG2(2009), *Employer Further Guide to PAYE and NICs*. See 'Employer Helpbooks' inside cover, for details of how you can obtain one.

## Salary sacrifice

If an employee has entered into a salary sacrifice with you their AWE is calculated using the amount of earnings actually paid to them during the set period.

For more information on the rules for salary sacrifice go to [www.hmrc.gov.uk/specialist/salary\\_sacrifice.htm](http://www.hmrc.gov.uk/specialist/salary_sacrifice.htm)

## Childcare vouchers

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

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

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

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

## Earnings in the set period affected by a backdated pay rise

If your employee's entitlement to SAP is less than the standard rate, and they get a backdated pay rise which falls before the start of the set period, but the earnings in the set period at the time the SAP was originally calculated had not been adjusted to reflect this pay rise before the end of the set period you **must**:

- recalculate their AWE
- pay the extra SAP due.

## NHS employees

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

For further information call the Employer Helpline **08457 143 143**.

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

Calculation of AWE is always based on all earnings actually paid within the set period, regardless of any overpayment or underpayment of wages made in that period.

This may mean an employee is eligible for SAP even if their AWE would otherwise have been below the Lower Earnings Limit (LEL), or they may not qualify for SAP where an underpayment of wages means their AWE falls below the LEL.

Adjust any overpayment or underpayment of wages in the normal manner and note your wage records accordingly.

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

If your employee has AWE of less than:

- £90.00 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- £95.00 gross and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

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

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

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

For more information on PAYE Settlement Agreements and whether something is liable for Class 1 NICs, see the booklet CWG2(2009), *Employer Further Guide to PAYE and NICs*.

## Some of the employee's earnings are included in a PAYE Settlement Agreement and earnings in the set period are covered in a backdated pay rise

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

- some of their earnings were included in a PAYE Settlement Agreement, and
- they then get a backdated pay rise which increases the amount of earnings already paid in the set period for working out their AWE, and
- their AWE is less than £95.00

you **must** re-calculate their AWE, as shown on page 22.

## Re-calculating your employee's AWE

### Step 1

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

If the new AWE amount is at least:

- £90.00 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- £95.00 gross and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

your employee's earnings are high enough to get SAP. So:

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

Your employee may not be entitled to any extra SAP because their AWE with the backdated pay rise, excluding the PAYE Settlement Agreement earnings, is less than their original AWE. You can now include the PAYE Settlement Agreement earnings to see if they may be entitled to any extra SAP.

If the re-calculated earnings are still less than their original AWE, do nothing.

If the new AWE is less than the Lower Earnings Limit (LEL) shown above go to Step 2.

### Step 2

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

If the new AWE amount is at least:

- £90.00 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2008 and 4 April 2009
- £95.00 gross and the adoption agency told the adopter that they had been matched with a child between 5 April 2009 and 3 April 2010

your employee's earnings are high enough to get SAP. So:

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

If the new AWE is less than the LEL shown above they cannot get SAP.

Give them form SAP1 *Why I cannot pay you SAP*. Take a copy of the evidence they got from the adoption agency and give the original back to them.

## Exceptions to normal conditions for SAP

### Employee leaves job after the date the adoption agency tells the adopter that they have been matched with a child

Your employee should give you 28 days notice of when they want to start to be paid if they can.

You can start paying your employee SAP up to 14 days before the day the child is placed, but no later than the day the child is placed or the day after if the employee is at work that day.

If they don't want to start being paid before the child is placed they **must** tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

### Reinstatement after dismissal

If they did not work for you during the whole period you worked out using page 10:

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

they are entitled to SAP as if they had not been dismissed.

Tables showing the latest start date for employment with you are on page 38.

All the other rules apply.

### Reinstatement following service in the Armed Forces

If your employee did not work for you during the whole period you worked out using page 10:

- because they were serving in the Armed Forces, and
- they return to work for you within six months of the end of their service in the Forces under the Reserve Forces (Safeguard of Employment) Regulations

they may still be able to get SAP.

To get SAP they **must** have worked for you for at least 26 weeks, including the Sunday of the week when the adoption agency told them that they had been matched with a child. Do not count the period they served in the Armed Forces as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks.

Tables showing the latest start date for employment with you are on page 38.

All the other rules apply.

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

If your employee did not work for you during the whole period you worked out using page 10, because they were on strike, they may still be able to get SAP.

To get SAP they must have worked for you for at least 26 weeks, including the week when the adoption agency told them that they had been matched with a child. Do not count the period they were on strike as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks.

All the other rules apply.

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

Short-term contract or agency workers who did not work for you during the whole period you worked out using page 10, because you did not have work to offer them, can get SAP. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

### Break in employment because of public holidays

Short-term contract or agency workers who did not work for you during the whole period you worked out using page 10, because of public holidays, can get SAP. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

### Break in employment because of sickness or injury

Short-term contract or agency workers who did not work for you during the whole period you worked out using page 10, because they were sick or injured, can get SAP, if the total period of incapacity is 26 weeks or less.

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

All the other rules apply.

## Break in employment because of maternity leave

A short-term contract or agency worker who did not work for you during the whole period you worked out using page 10, because:

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

can get SAP. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

For more information go to

[www.businesslink.gov.uk/workandfamilies](http://www.businesslink.gov.uk/workandfamilies)

## Break in employment because of adoption leave

Short-term contract or agency workers who did not work for you during the whole period you worked out using page 10:

- because they were on adoption leave, and
  - they worked for you before and after the break
- can get SAP. Employees with an ongoing contract of service during such a break would remain continuously employed.

All the other rules apply.

## Break in employment because of paternity and parental leave

Short-term contract or agency workers who did not work for you during the whole period you worked out using page 10:

- because they took paternity leave when they were adopting a child or when a baby was born
  - because they took parental leave, or
  - they worked for you before and after the break
- they can get SAP. Employees with an ongoing contract of service during such a break would remain continuously employed.

For more information on parental leave go to

[www.businesslink.gov.uk/workandfamilies](http://www.businesslink.gov.uk/workandfamilies) and

[www.direct.gov.uk/workandfamilies](http://www.direct.gov.uk/workandfamilies)

All the other rules apply.

## 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 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 transferring employer must provide will give the identities of those employees being transferred with the business.

If you are not sure if TUPE applies contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### If the regulations don't apply continuity of employment may still not be broken when:

- 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
- 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.

Where an employee of a health service employer moves to another health service while undergoing training, the continuity of training may be broken. If you need further advice contact the Employer Helpline on **08457 143 143**.

**If continuity of employment is not broken**, the employee can also get SAP, as long as they work for you and the previous employer during the whole period you worked out using page 10.

### If continuity of employment is broken and:

- you take on the business after the start of the week when the adoption agency told the adopter that they had been matched with a child, the previous employer must pay SAP to the employee if they were employed by the previous employer in the week they were matched with a child. They will still be entitled to 52 weeks adoption leave.
- you take on the business before the start of the week when the adoption agency told the adopter that they had been matched with a child, the employee cannot get SAP. They will still be entitled to 52 weeks adoption leave.

All other rules apply.

Tables showing the latest start date for employment with you are on page 38.

## Adoption pay and leave when a child is adopted from abroad

Employees who adopt a child from abroad may get SAP and adoption leave if they satisfy the qualifying conditions.

When an employee or their partner adopts a child from abroad they can get SAP if the adoption process includes an application to the relevant UK authority to access the adopter. The relevant authority is usually Social Services or an agency who carries out these functions on their behalf. If they agree that the adopter is suitable to adopt a child from overseas the UK authority will send a Certificate of Eligibility to the overseas authority and send an Official Notification that they have done this to the adopter.

The employee will need to keep this document so you should take a copy for your records. They cannot receive SAP or adoption leave unless they have received Official Notification from the relevant UK authority that they are eligible to adopt a child from overseas.

### The qualifying conditions

To qualify for SAP when adopting a child from abroad your employee must satisfy **all** of the following:

- The adopter has been sent Official Notification that the relevant UK authority has issued a Certificate of Eligibility to the overseas authority involved in the adoption that they are eligible to adopt a child from overseas.
- They have been continuously employed with you for at least 26 weeks continuing into the week in which they were sent Official Notification from the relevant UK authority, or by the time they want to start their Adoption Pay Period (APP).
- They have AWE of not less than the Lower Earnings Limit for National Insurance purposes which applies at the end of the week in which the adopter received Official Notification or the week they complete 26 weeks continuous employment if this is later.
- They give you appropriate notice within the time limits.
- If they are adopting the child with their partner, the partner must declare that they are not also claiming SPP.
- They have provided evidence that the child has entered the UK to live with them.

If your employee does not satisfy all these qualifying conditions for SAP and adoption leave give them form SAP1 *Why I cannot pay you SAP*.

### Adoption from abroad which does not include a relevant UK authority

An employee or their partner may have adopted a baby abroad without the need to involve a UK authority. If this is the case, they will not be entitled to SAP because there will be no Official Notification as no Certificate of Eligibility will have been issued.

## The rules

### Notifying you

As with domestic adoption pay, notice of SAP and leave does not have to be in writing unless you want it to be and may be given on your employee's behalf. If posted, the notice is treated as given on the date it is posted.

### Evidence of entitlement to SAP

#### Declaration of entitlement – form SC6

Your employee completes a declaration giving the date the child is expected to enter the UK and also declares that they are not also claiming Statutory Paternity Pay. Form SC6 is available for this purpose, or you may use your own form, see page 8.

There are three stages when the employee should give you notice which are different from those for UK adoptions.

#### First stage

Your employee must tell you:

- the date on which the adopter received Official Notification, and
- the date the child is expected to enter the UK.

If they have already completed 26 weeks continuous employment with you when they receive Official Notification, they must tell you this within 28 days of receiving it.

If they haven't already completed 26 weeks continuous employment with you when they receive Official Notification they must tell you within 28 days of the Sunday of the week when they complete 26 weeks continuous employment.

Where a new employee had already received Official Notification before they started work for you, they can qualify for SAP from you provided they:

- complete their 26 weeks continuous employment before they want their pay period to start, and
- satisfy all other criteria.

In this case only, you can calculate their average earnings on an eight week period up to the point where they complete 26 weeks, of continuous service.

#### Second stage

Your employee should then tell you when they want their SAP to start at least 28 days beforehand.

Employees can change their mind about the date on which they want their SAP to start providing they tell you at least 28 days in advance of the new date.

#### Third stage

Your employee must tell you the date the child enters the UK within 28 days of that date.

### Evidence of entry into the UK

The employee will need to give you evidence that the child has actually entered the UK to live with them, such as plane tickets or copies of entry clearance documents.

## Adoption Pay Period (APP) and adoption leave

### The start date

Your employee can choose to start being paid and/or start their leave:

- on the date the child enters the UK, or on the following day if your employee is at work that day, or
- on a pre-determined date, chosen by your employee, no later than 28 days after the child enters the UK.

The APP and adoption leave can start on any day of the week.

- SAP and adoption leave must be taken in a single period, it cannot be split and cannot be taken as odd days.
- The maximum length of the APP is 39 weeks.
- The maximum length of adoption leave is one year.
- A week is any period of 7 days.

### Child does not enter the UK

Your employee cannot start their leave or pay until the child has entered the UK. They must tell you as soon as they know that they will not be adopting the child after all.

### New employee receives Official Notification of adoption before starting work for you

Where a new employee is adopting a child from abroad and they have already received Official Notification before they have started work for you, they can qualify for SAP provided they:

- complete their 26 weeks continuous employment before they want their pay period to start, and
- satisfy all other criteria.

In this case, you can calculate their average earnings on an eight week period up to the point where they complete 26 weeks of continuous employment.

### Employment ends before the start of pay and leave

Whether you must pay SAP to your ex-employee will depend upon how long it is before the child enters the UK.

If the employment ends **after** your employee receives Official Notification and they had completed 26 weeks continuous employment with you, you remain liable to pay SAP if the APP starts within six months of the date your employee left. The employee must still give you evidence and appropriate notice. However, any new employer has no obligation to allow time off work, and the employee will not be entitled to SAP in any week they work for a new employer. Your employee must tell you if they work for a new employer. If you stop trading before your employee's SAP can start, HMRC will take over the liability to pay the SAP.

If the employment ends after your employee receives Official Notification and they had completed 26 weeks continuous employment with you, but the APP doesn't start within six months of the date your employee left, liability then transfers to HMRC. They must give their local HMRC office evidence of entitlement.

If the adopter is now with a new employer and has completed 26 weeks continuous employment with the new employer to re-qualify for SAP and adoption leave, it is up to the new employer to pay SAP.

## Paying SAP

### Start of payment

SAP is a weekly payment. It should be paid on the employees next usual pay day on or after the last day of their pay week.

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

The SAP pay period starts on the day after the last day your employee worked before starting their adoption leave. Your employee will have told you when they planned to stop work, see page 12.

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

### SAP paid part-weekly

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

### Employee is not returning to work

If your employee decides not to return to work you must still pay them SAP. **You cannot ask them to repay it.**

### Stopping payment

Payment of SAP usually stops after 39 weeks, but there are circumstances where it might stop earlier. These are detailed on pages 27 to 29.

### Employee does some work for you

If you and your employee agree, an employee can work for you under their contract of service and during their SAP pay period for up to ten days without losing their SAP for the weeks in which that work is done. These ten days are called 'Keeping in Touch' (KIT) days and enable your employee to undertake the odd days training or do some work for you on occasions to keep in touch during their adoption leave without losing their SAP or ending their adoption 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 an employee's eventual return to work and to make it easier for them to keep in touch with their employer during their leave from work.

Both the employee and the employer must agree that these days may be worked, the arrangements including what work the employee will be doing and how much they 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 SAP 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 SAP rate the employee is entitled to and also comply with your statutory obligations, such as paying at least the National Minimum Wage (NMW). For further information contact the NMW Helpline **0845 6000 678**.

#### Keeping in Touch (KIT) days example

When an employee works Monday to Friday, the Adoption Pay Period is 4 March 2009 to 1 December 2009. SAP pay week is a Wednesday to Tuesday.

- They return to work for six days Monday to Wednesday, 31 August 2009 to 2 September 2009, and
- Monday to Wednesday, 7 September 2009 to 9 September 2009.

SAP pay weeks for this period are:

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

They then work for five days Monday to Friday, 21 October 2009 to 27 October 2009.

SAP pay weeks for this period are:

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

SAP is payable for all of the above SAP pay weeks except for the pay week 28 October 2009 to 3 November 2009 because in this week the employee has exceeded their ten KIT days.

The employee has used their total of ten KIT days, so if they do any further work for you SAP will not be payable for the SAP pay week in which they work.

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

If your employee does more than ten days work for you in their SAP pay period you cannot pay SAP to them for any week in which they do such work.

To be clear, if a week in the SAP pay period contains only KIT days, SAP should be paid.

If a week in the SAP pay period contains the last of the KIT days and also another day or days of work for you, or they have used up all their KIT days, you must stop SAP for each week in which such work is done.

Once your employee has used their ten KIT days, they will lose one week's SAP for each week or part week they work for you. The SAP pay period is not extended to take account of any such weeks.

## Employee works for another employer

If your employee works for another employer during the SAP pay period, you need to check whether they worked for that employer during the week when the adoption agency told the adopter that they had been matched with a child.

Tables showing the latest start date for employment with you are on page 38.

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

If your employee is working for someone they worked for during the week when the adoption agency told the adopter that they had been matched with a child, you should continue to pay them SAP as normal.

If your employee is working for someone **they did not work** for during the week when the adoption agency told the adopter that they had been matched with a child, you must stop paying SAP from the start of the SAP pay week they work for that employer.

Give them form SAP1 *Why I cannot pay you SAP*. Take a copy of the evidence they got from the adoption agency and give the original back to them.

## Employee is taken into legal custody

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

Give them form SAP1 *Why I cannot pay you SAP*. Take a copy of the evidence they got from the adoption agency and give the original back to them.

It is your employee's responsibility to tell you if they are taken into legal custody.

Your employee is in legal custody if they are detained. Usually this means they are arrested or in prison.

They are not in legal custody if they are:

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

## Employee becomes sick

If your employee tells you that they are incapable of work during the SAP pay period you must check whether or not they are entitled to Statutory Sick Pay (SSP) see the E14 *Employer Helpbook for Statutory Sick Pay*.

You cannot pay them SAP for any SAP pay week in which they are entitled to be paid SSP.

Give them form SAP1 *Why I cannot pay you SAP*. Take a copy of the evidence they got from the adoption agency and give the original back to them.

Bear in mind that:

- SAP pay weeks can start on any day of the week
- your employee will not normally be entitled to be paid SSP from the first day they are incapable of work.

Where the incapacity ends within the SAP pay period, payment of SAP will recommence at the start of the next SAP pay week following the end of the employee's incapacity to work.

## Employee dies

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

## The child dies

If the child dies during the SAP pay period, the pay period and leave will end eight weeks after the end of the SAP pay week in which the child dies, if it was not due to end earlier.

## Child ceases to live with the adopter

If the child ceases to live with the adopter during the SAP period, the pay period and leave will end eight weeks after the end of the SAP pay week in which the child stops living with the adopter, if it was not due to end earlier.

## You cease to trade

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

## You become insolvent

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

You should tell your employees to contact their local HMRC office. It will help if you or the liquidator can let HMRC know which of your employees are affected so HMRC can pay them as soon as possible.

## Paying through an agent

You can arrange for SAP 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 SAP from each employer if they satisfy all the terms and conditions. They can choose to take different time off from each employer.

## Paying your employee who has more than one job with you

If your employee has more than one job with you, you should have worked out whether they can get more than one lot of SAP from you, when you were looking at whether their earnings were high enough in each employment, see page 14.

If they are entitled to one payment of SAP from you they should take the same time off from each job otherwise they will lose some of their SAP because they are working for you, if this exceeds the maximum 10 KIT days allowed.

If they are entitled to more than one payment of SAP from you they can choose to take different time off from each job without losing their entitlement to SAP subject to KIT days, see page 27.

## Non-cash payments

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

For more information on non-cash payments see [www.hmrc.gov.uk/specialist/salary\\_sacrifice.htm](http://www.hmrc.gov.uk/specialist/salary_sacrifice.htm)

For other information please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**, or seek independent legal advice.

## Lump sums

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

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

## Offsetting SAP against employee's pay

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

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

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

Whatever you pay your employee, you must still work out how much SAP your employee was entitled to and keep the relevant records, see page 36.

## Child is placed after the expected date

If you have already started to pay your employee you should continue. The SAP pay period is not extended.

You can start paying your employee up to 14 days before the date the child is expected to be placed with them, and no later than the date the child is placed, or the day after if they are at work that day.

## More than one child is placed with the adopter under separate arrangements

More than one child may be placed with the adopter under different arrangements within the 39 weeks of entitlement to SAP for the first child. This can happen where two or more siblings are adopted from the same family.

The employee will only be entitled to a further period of SAP and adoption leave where each child has been placed under separate adoption arrangements.

Entitlement of up to a further 39 weeks of SAP and adoption leave will commence from the date the second child is placed with the adopter.

Where the periods of SAP and adoption leave overlap, payment of the first period of SAP will continue regardless of the commencement of the second period of payment. This means that where the two periods of SAP overlap, two payments of SAP may be payable for the same week.

However, for the purposes of adoption leave, the first period of leave will stop from the date the second period of leave starts.

There is no entitlement to two separate periods of SAP and adoption leave if more than one child is adopted under the same arrangement.

## The child is not placed after all

If you have already started to pay your employee but the child is not placed with them after all, the SAP pay period and leave will end **eight** weeks after the end of the week in which your employee is told that the child will not be placed. It is your employee's responsibility to tell you that the child will not be placed.

If your employee didn't want to start being paid before the child was placed then do not start to pay them. Do not start paying on the assumption that the child was placed on the expected date. It is your employee's responsibility to tell you when the child is placed.

## Your employee disagrees with your decision on their SAP entitlement

### Written statement

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

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

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

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

### Formal decisions about SAP entitlement

If your employee doesn't agree with your decision about their SAP 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 SAP. In practice, such decisions are given by authorised officers of HMRC. Their decisions are given strictly in accordance with the facts and the law.

Before asking for a formal decision from HMRC, your employee will be expected to have asked you for a written statement about their SAP position. Perhaps they will also have discussed the problem with you.

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

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

If all parties are unable to agree you will be offered a review. Reviews are carried out by an officer not involved with the original decision. If you accept the offer of review, but do not agree with the review conclusion you will have a further 30 days within which to notify the appeal to the independent tribunal.

Once you have notified the appeal to the tribunal it will consider the appeal. You both have the right to appear in person and/or be represented at the hearing.

Tribunal decisions are final, except that you can appeal on a point of law, with leave, to the Upper Tribunal.

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

### SAP is due but not paid after a formal decision

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

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

For details on penalties, see page 4.

## Recovering SAP

### How much can I get back?

The amount you get back normally depends on your total gross, (employers' plus employees',) Class 1 National Insurance liability in the tax year ending before the employee's matching week. 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% of the Statutory Adoption Pay (SAP), and
- an additional amount as compensation for the NICs you pay on the SAP. The compensation rate for 2009-10 is 4.5%.

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

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

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

If you were not an employer for the whole of the previous tax year, check whether your annual NICs liability was the equivalent of £45,000 or more, or £45,000 or less. If:

- the adoption agency told the adopter that they have been matched with a child between 6 April 2008 and 4 April 2009 check your liability for 2007-08
- the adoption agency told the adopter that they have been matched with a child between 5 April 2009 and 3 April 2010 check your liability for 2008-09.

If you were not an employer at all in the previous tax year, you will need to check whether your annual NICs liability in the tax year containing the employee's matching week will be the equivalent of £45,000 or less.

### Where does the money come from?

Use the money you have to pay over to HMRC for:

- PAYE tax
- NICs
- 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 checksheet on page 35.

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

Check which tax year you need to look at depending on the date the adoption agency told the adopter that they were matched with a child:

- if the adoption agency told the adopter that they have been matched with a child between 6 April 2008 and 4 April 2009 check your liability for 2007-08
- if the adoption agency told the adopter that they have been matched with a child between 5 April 2009 and 3 April 2010 check your liability for 2008-09.

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

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

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

£

2. Work out the number of tax months you were an employer in that year.

Count part months as whole months and remember that tax months run from the 6th of one month to the 5th of the following month.

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

£

4. Multiply the figure in 3 by 12.

£

If the figure in 4 is £45,000 or less you are entitled to:

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

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

## Checksheet - if you were not an employer at all in the tax year ending before the employee's matching week.

1. Enter the date the adoption agency told the adopter that they had been matched with a child.

2. Find the date of the first Sunday on or before the date in 1.

3. Identify the tax year in which the Sunday falls.

4. Identify the tax month before this Sunday. Remember that tax months run from the 6th of one month to the 5th of the following month.

5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, **or the first month for which you were liable for Class 1 NICs**, and the tax month you identified at 4, inclusively.

6. Work out the number of tax months between the start of the tax year you identified at 3, **or the first tax month for which you were liable for Class 1 NICs**, and the tax month you identified at 4, inclusive.

7. Divide the figure in 5 by the figure in 6.

8. Multiply the figure in 7 by 12.

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

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

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

## Funding from your Accounts Office

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

You can ask your HMRC Accounts Office to pay you the balance of what you need to pay out up to the amount you would be entitled to recover.

You can apply on line at [www.hmrc.gov.uk/employers/statpayments-recovery.htm](http://www.hmrc.gov.uk/employers/statpayments-recovery.htm)

You should tell them the information set out in the quick check box below and ask for advance funding.

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

Total amount of Statutory Adoption Pay (SAP) you can get back	A	<input type="text"/>	£
PAYE tax	B	<input type="text"/>	£
National Insurance contributions (including those on SAP)	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 boxes B + C + D + E) =	F	<input type="text"/>	£

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

## Recovery of SAP paid in a previous tax year

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

You should complete form SP32 to get the money back. You can print these forms from the Employer CD-ROM, or go to our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers) They can also be obtained from your nearest HMRC office or from the Employer Orderline on **08457 646 646**.

Send the completed form SP32 to:  
HM Revenue & Customs  
National Insurance Contributions Office  
Employer Teams 1 & 2  
Refunds Group Contributor Group  
Room BP1001  
Benton Park View  
Newcastle Upon Tyne  
NE99 1ZZ.

## Keeping records

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

You must keep:

- the evidence the adoption agency gave your employee and they gave you. If you give this back to your employee with form SAP1 *Why I cannot pay you SAP*, keep a copy of the evidence
- a record of the payment dates and the amount paid
- the date the pay period began
- a record of any weeks in the 39 week period when SAP wasn't paid, with reasons
- form SAP2 *Record Sheet*, which is available on the Employer CD-ROM or from the Orderline **08457 646 646**, to help you keep a record of your payments.

## Recording payments of SAP

You must record payments of SAP 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. You will need to record the amount of SAP you have paid and recovered when you complete Form 35 (Employers Annual Return) and the P14 at the end of the tax year.

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

## SAP payments and/or recovery covering more than one tax year

You cannot make a recovery in one tax year that relates to SAP payments made in a previous tax year. For information about how you can recover payments made in a previous tax year, see page 35.

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

## Recording advance payments

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

Any advance and 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 SAP

If you make an error in paying SAP 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 adoption may affect a later one.

If you have made an error in an earlier tax year, contact your nearest HMRC office, they will tell you what to do to correct it. See CWG2(2009) *Employer Further Guide to PAYE and NICs*, for information on how to correct errors in recording NICs.

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

## 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 Peloponese, the Dodecanese, the Cyclades, the Ionian Islands, the Aegean Islands and Crete
- Hungary
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Sweden
- UK, including England, Wales, Scotland and Northern Ireland (but **not** the Channel Islands or the Isle of Man).

## Tables of latest start dates for employment

Adopter told they have been matched with a child		Latest start date for employment with you
Sunday	Saturday	Saturday
05/04/2009	11/04/2009	18/10/2008
12/04/2009	18/04/2009	25/10/2008
19/04/2009	25/04/2009	01/11/2008
26/04/2009	02/05/2009	08/11/2008
03/05/2009	09/05/2009	15/11/2008
10/05/2009	16/05/2009	22/11/2008
17/05/2009	23/05/2009	29/11/2008
24/05/2009	30/05/2009	06/12/2008
31/05/2009	06/06/2009	13/12/2008
07/06/2009	13/06/2009	20/12/2008
14/06/2009	20/06/2009	27/12/2008
21/06/2009	27/06/2009	03/01/2009
28/06/2009	04/07/2009	10/01/2009
05/07/2009	11/07/2009	17/01/2009
12/07/2009	18/07/2009	24/01/2009
19/07/2009	25/07/2009	31/01/2009
26/07/2009	01/08/2009	07/02/2009
02/08/2009	08/08/2009	14/02/2009
09/08/2009	15/08/2009	21/02/2009
16/08/2009	22/08/2009	28/02/2009
23/08/2009	29/08/2009	07/03/2009
30/08/2009	05/09/2009	14/03/2009
06/09/2009	12/09/2009	21/03/2009
13/09/2009	19/09/2009	28/03/2009
20/09/2009	26/09/2009	04/04/2009
27/09/2009	03/10/2009	11/04/2009
04/10/2009	10/10/2009	18/04/2009
11/10/2009	17/10/2009	25/04/2009
18/10/2009	24/10/2009	02/05/2009
25/10/2009	31/10/2009	09/05/2009

Adopter told they have been matched with a child		Latest start date for employment with you
Sunday	Saturday	Saturday
01/11/2009	07/11/2009	16/05/2009
08/11/2009	14/11/2009	23/05/2009
15/11/2009	21/11/2009	30/05/2009
22/11/2009	28/11/2009	06/06/2009
29/11/2009	05/12/2009	13/06/2009
06/12/2009	12/12/2009	20/06/2009
13/12/2009	19/12/2009	27/06/2009
20/12/2009	26/12/2009	04/07/2009
27/12/2009	02/01/2010	11/07/2009
03/01/2010	09/01/2010	18/07/2009
10/01/2010	16/01/2010	25/07/2009
17/01/2010	23/01/2010	01/08/2009
24/01/2010	30/01/2010	08/08/2009
31/01/2010	06/02/2010	15/08/2009
07/02/2010	13/02/2010	22/08/2009
14/02/2010	20/02/2010	29/08/2009
21/02/2010	27/02/2010	05/09/2009
28/02/2010	06/03/2010	12/09/2009
07/03/2010	13/03/2010	19/09/2009
14/03/2010	20/03/2010	26/09/2009
21/03/2010	27/03/2010	03/10/2009
28/03/2010	03/04/2010	10/10/2009
04/04/2010	10/04/2010	17/10/2009
11/04/2010	17/04/2010	24/10/2009
18/04/2010	24/04/2010	31/10/2009
25/04/2010	01/05/2010	07/11/2009
02/05/2010	08/05/2010	14/11/2009
09/05/2010	15/05/2010	21/11/2009
16/05/2010	22/05/2010	28/11/2009
23/05/2010	29/05/2010	05/12/2009



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

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