

Employer Helpbook for Statutory Adoption Pay

To use for employees who expect to have a child placed with them
for adoption on or after 3 April 2011

Including new rates from 3 April 2011

Help and guidance

Help and guidance is available from the following sources.

The Internet

Go to www.businesslink.gov.uk/paye

Online services

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

For help using our online services contact the Online Service Helpdesk by:

- email helpdesk@ir-efiles.gov.uk or
- phone **0845 60 55 999**.

Basic PAYE Tools (formerly the Employer CD-ROM)

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

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

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

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

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

Employer helplines

- Employer for **less than 3** years, phone **0845 60 70 143**.
- Employer for **more than 3** years, phone **08457 143 143**.
- If you have a hearing or speech impairment and use a textphone, phone **0845 602 1380** (you need specialist equipment such as Minicom to use this service).

Employer helpbooks and forms

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

Exceptionally, if you don't have access to the Internet, copies are available from the Employer Orderline on **08457 646 646**.

Yr laith Gymraeg

I lawrlwytho ffurflenni a llyfrynau cymorth Cymraeg, ewch i www.hmrc.gov.uk/cymraeg/employers/emp-pack.htm

Os, yn eithriadol, nad oes gennych gysylltiad i'r rhyngwyd, ffoniwch **0845 302 1489** er mwyn archebu ffurflenni a llyfrynau cymorth Cymraeg.

Forms and guidance in Braille, large print and audio

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

In person

We offer free workshops covering all payroll topics. These workshops are available at locations nationwide. For more information:

- go to www.hmrc.gov.uk/bst or
- phone our Advice Team on **0845 603 2691**.

Employer Bulletin online

Information and news for employers, published several times a year.

Go to www.businesslink.gov.uk/employerbulletin

Employer email alerts

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

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

To register, go to

www.businesslink.gov.uk/hmrcemployeremailalerts

Your HM Revenue & Customs (HMRC) office

Your own HMRC office can also help you if you have a query about your PAYE scheme. All our office contact details are on our website. Go to

www.hmrc.gov.uk/local/employers/index.htm

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

Your rights and obligations

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

Contents

Information	1	Has your employee given you sufficient notice?	8
More help	1	Choosing dates	8
Statutory Adoption Pay (SAP) calculators	1	Change of mind	8
Adoption leave and pay	1	Acknowledging your employee's notice for SAP and leave	8
Employees and employers in Northern Ireland	1	Returning after adoption leave	8
Visits from HMRC	1	Employee does not give acceptable notice	8
SAP rates	1	Acknowledging your employee's notice for SAP and leave	8
Additional Statutory Paternity Pay (ASPP)	1		
Employment rights	2	Has your employee earned enough in the relevant period?	9
Couples adopting together	2	What counts as earnings	9
Foster carers	2	How to work out the relevant period	10
Step-parents	2	Quick method for calculating Average Weekly Earnings (AWE)	11
Employee is made redundant	2	Checksheet for weekly paid - how to work out AWE	11
		Does your employee earn enough?	11
Terms and conditions used in this Helpbook	3	Checksheet for monthly paid - how to work out AWE	12
Using this Helpbook	3	Does your employee earn enough?	12
Employee	3	Rounding to the nearest whole month when there is not a whole number of months in the relevant period	12
Employer	3	Employee not paid in a regular pay pattern	13
Statutory Adoption Pay (SAP)	3	Checksheet for employees not paid in a regular pay pattern	13
Adopter	3	Does your employee earn enough?	13
Matched/Matching	3	Directors	14
Matching date	3	Checksheet for directors paid only by a formal vote	15
Matching week	3	Does your director earn enough?	15
Placed	3	Weekly paid employee without a whole number of weeks in the relevant earnings period	16
Official Notification	3	Mistimed payments	16
Declaration of entitlement	3	Your employee has more than one job with you	16
Lower Earnings Limit (LEL)	3	Salary sacrifice	16
Adoption leave	3	Contractual benefits	16
Normal payday	3	Earnings in the relevant period affected by a backdated pay rise	16
		Overpayment or underpayment of earnings made during the relevant period	16
Specific employments	4	Employee does not qualify and some of their earnings are included in a PAYE Settlement Agreement	17
Casual employees	4	Some of the employee's earnings are included in a PAYE Settlement Agreement and earnings in the relevant period are covered in a backdated pay rise	17
Agency workers	4	Recalculating your employee's AWE	17
Casual employees, supply teachers, seasonal workers or other sporadic employment	4		
Mariners	4		
NHS employees	4		
Forms you may need to use	5		
SAP1 <i>Non-payment of Statutory Adoption Pay (SAP)</i>	5		
SAP2 <i>Statutory Adoption Pay record sheet</i>	5		
SC6 <i>Statutory Adoption Pay and adoption leave when adopting from abroad</i>	5		
Using your own versions of the adoption forms	5		
Flowchart - Operating the SAP scheme	6		
Has your employee given you the right evidence within the time limits?	7		
Evidence of matching	7		
Time limits	7		
Has your employee been employed by you long enough?	7		
Length of employment	7		
Employee works abroad	7		

Exceptions to the normal conditions for SAP	18	Recovering SAP	27
Employee leaves job after the date the adoption agency tells the adopter that they have been matched with a child	18	How much can I get back?	27
Reinstatement after dismissal	18	Where does the money come from?	27
Reinstatement following service in the Armed Forces	18	If you were not an employer for the whole of 2009-10 and 2010-11	27
Breaks in employment	18	Checksheet - if you were not an employer for the whole of 2009-10 and 2010-11	27
You take over a business	19	Checksheet - if you were not an employer at all in the tax year ending before the employee's Matching week	28
Adoption pay and leave when a child is adopted from abroad	20	Recovery of SAP that has been paid in a previous tax year	28
The qualifying conditions	20	Get help with statutory payments funding	29
Adoption from abroad which does not include a relevant UK authority	20	Advance funding	29
The rules	20	A quick checksheet to see if you need advance funding	29
Evidence of entitlement to SAP	20	Applying for advance funding	29
Evidence of entry into the UK	20	No PAYE payment to make	29
Adoption Pay Period (APP) and adoption leave	21	Keeping records	30
Paying SAP	22	What you must keep	30
Start of payment	22	Recording payments of SAP	30
SAP paid part-weekly	22	SAP payments and/or recovery covering more than one tax year	30
Employee goes abroad	22	Recording advance payments	30
Employee is not returning to work	22	Incorrect payment of SAP	30
Stopping payment	22	Errors on returns and documents	30
Keeping in Touch (KIT) days	23	A list of the European Economic Area (EEA) countries	31
Employee does some work for you	23	Tables of latest start dates for employment	32
Employee works for another employer	24		
Employee is taken into legal custody	24		
Employee becomes sick	24		
Employee dies	24		
The child dies	24		
Child ceases to live with the adopter	24		
You cease to trade	24		
You become insolvent	24		
Paying through an agent	24		
Employee has more than one employer	24		
Paying your employee who has more than one job with you	24		
Non-cash payments	25		
Lump sums	25		
Offsetting SAP against employee's pay	25		
Child is placed after the expected date	25		
More than one child is placed with the adopter under separate arrangements	25		
The child is not placed	25		
Your employee disagrees with your decision on their SAP entitlement	26		
Written statement	26		
Formal decisions about SAP entitlement	26		
SAP is due but not paid after a formal decision	26		
Penalties	26		

Information

More help

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

- phone the Employer Helpline on **08457 143 143** for advice about entitlement to SAP and what your employee can do if they disagree with your decision not to pay SAP
- get advice on employment law, go to **www.businesslink.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/sap.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 to work out if you are entitled to recover any of the SAP you have paid to your employees in each month.

The Basic PAYE Tools includes a calculator. Go to **businesslink.gov.uk/basicpayetools**

There is also a learning zone on the Basic PAYE Tools which will take you step by step through the process of paying and recovering SAP.

Adoption leave and pay

For information on adoption pay and leave, go to **www.businesslink.gov.uk/workandfamilies**

Free confidential advice on employment law is available from the Advisory, Conciliation and Arbitration Service (Acas), go to **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**
- 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** or phone **028 9032 1442**.

Visits from HMRC

From time to time, our officers visit employers to see if their payroll is running smoothly. If we visit you we will ask to see your SAP records.

SAP rates

SAP is paid to an employee by their employer in the same way as wages. SAP is paid at the lower of £128.73 or 90% of Average Weekly Earnings (AWE) for pay weeks commencing on or after Sunday 3 April 2011.

At the time this helpbook was printed, changes in the rates for paying and recovering SAP 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 2011.

Additional Statutory Paternity Pay (ASPP)

ASPP was introduced for qualifying employees jointly adopting a child on or after 3 April 2011 whose spouse, partner or civil partner is entitled to SAP. It is not payable to an employee who has received SAP for the child.

Couples in Northern Ireland need to be married before they can jointly adopt a child.

ASPP is to help the employee to take time off work to have more involvement with the raising of the child. Employers are responsible for administering the scheme and paying their employees the ASPP to which they are entitled. All statutory payments are treated as earnings for Income Tax and NICs purposes. For more information see the E19(2011) *Employer Helpbook for Ordinary and Additional Statutory Paternity Pay*.

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.

For interactive information about adoption pay and leave go to www.businesslink.gov.uk/workandfamilies

For more information on employment rights, contact Acas at www.acas.org.uk or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 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 must 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 with you they can ask us to make a formal decision. If this happens we will give you more information at the time. See page 26 for more 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 or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**. Ultimately, if the dispute continues, your employee may want to take the case to an employment tribunal.

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

Couples adopting together

If your employee is adopting the child with their partner, the couple must choose who applies for the SAP and adoption leave. The other partner may apply for Ordinary Statutory Paternity Pay (OSPP) and paternity leave and subsequently Additional Statutory Paternity Pay (ASPP) and additional paternity leave. For OSPP and ASPP see the E19(2011) *Employer Helpbook for Ordinary and Additional Statutory Paternity Pay*.

There is more information on the evidence required on page 27.

Foster carers

SAP and adoption leave are not usually available to foster carers, but 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. But, the partner of an adopter may be entitled to OSPP and paternity leave.

More information relating to adoptions by foster carers and step-parents is available at www.businesslink.gov.uk/workandfamilies and www.direct.gov.uk

Employee is made redundant

If you make your employee redundant you are still liable to continue paying SAP providing all the qualifying conditions have been met.

Terms and conditions used in this Helpbook

Using this Helpbook

Statutory Adoption Pay (SAP) is paid to help an adopter to take time off work when a child is placed with them for adoption. See the Statutory Adoption Pay section on this page.

We have used 'employee' throughout this Helpbook when talking about people who can get SAP and adoption leave.

Employee

For Statutory Adoption Pay (SAP) purposes an **employee** is a person whose earnings attract a liability for employer's secondary Class 1 NICs, or would but for your employee's age or the level of their earnings.

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

Employer

For SAP 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.

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 SAP then you will be responsible for making the SAP payments to which your employee is entitled.

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

If you are not sure who is an employee and who is an employer for SAP phone the Employer Helpline **08457 143 143**.

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.

Adopter

This 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

This 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

This means the date when the adoption agency told the employee that they had been matched with a child.

Matching week

This means the week when the adoption agency told the employee that they had been matched with a child. For SAP a week in this instance means Sunday to Saturday.

Placed

This 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

This is a letter from the relevant domestic authority to confirm that someone adopting a child from overseas has been approved as a suitable adoptive parent.

Declaration of entitlement

This is a form (SC6) on which an employee who is adopting a child from abroad with their partner must declare that they are not receiving or have not applied for Ordinary Statutory Paternity Pay (OSPP).

Lower Earnings Limit (LEL)

This is the minimum amount of earnings that an employee needs to qualify for benefits. It is also the level that employee's Average Weekly Earnings (AWE) must reach in a specific period for them to qualify for SAP. For 2011-12 year the LEL is £102.00.

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 entitled to 52 weeks statutory adoption leave.

SAP is payable for 39 weeks. An employee who does not qualify for SAP may still qualify for adoption leave. For more information about adoption leave

go to www.businesslink.gov.uk/workandfamilies

Normal payday

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

Specific employments

There are different rules for casual (or short contract) employees and agency workers. If you are not sure whether a worker is employed by you as a casual employee or is an agency worker, contact Acas at www.acas.org.uk or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**.

Casual employees

A casual employee is usually someone who works for an employer, as and when they are required on a series of short contracts of employment with that person. Such casual workers may also be called short contract employees.

If you have to deduct PAYE tax and Class 1 NICs from the employee's earnings then you will have to pay them SAP if they satisfy all of 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 the Employer Helpline on **08457 143 143**.

Agency workers

See 'Length of employment' on page 7. If they were 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 Matching week you need to check why not.

They can still get SAP if you:

- did not have work to offer them, or
- did offer work but the employee was unavailable because of sickness, injury, maternity leave, paternity leave, adoption leave, parental leave or paid holiday.

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 Matching week, then to get SAP they must do some more work for a client through you before starting their adoption absence.

Leave

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

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

Generally the same rules apply as for agency workers, but if they are:

- sick throughout the Matching week, or
 - not required to work during those weeks
- they can be treated as having worked in the Matching week. This applies even if they do not resume work before commencing their adoption absence.

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

Mariners

Mariners can get 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, phone the Employer Helpline on **08457 143 143**.

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

NHS employees

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

For more information phone the Employer Helpline on **08457 143 143**.

But, if an employee changes from one Trust to another during the 26 week qualifying rule, the employee may not satisfy the continuous employment condition for SAP purposes, unless it is for the same NHS Trust.

For more advice email

doctorsanddentists@nhsemployers.org

Forms you may need to use

All HMRC adoption forms are available from:

- the Orderline on **08457 646 646**
- www.hmrc.gov.uk/paye/forms-publications.htm

SAP1 Non-payment of Statutory Adoption Pay (SAP)

You **must** use this form to tell your employee that they are not entitled to Statutory Adoption Pay.

You must give this form to your employee within seven days of making your decision.

SAP2 Statutory Adoption Pay record sheet

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

SC6 Statutory Adoption Pay and adoption leave when adopting from abroad

Use this form to tell your employee the terms and conditions relating to entitlement to SAP when they are adopting a child jointly with their partner from abroad. They must declare that they are not also applying for Ordinary Statutory Paternity Pay (OSPP) or Additional Statutory Paternity Pay (ASPP). 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 Non-payment of Statutory Adoption Pay (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 financial 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.

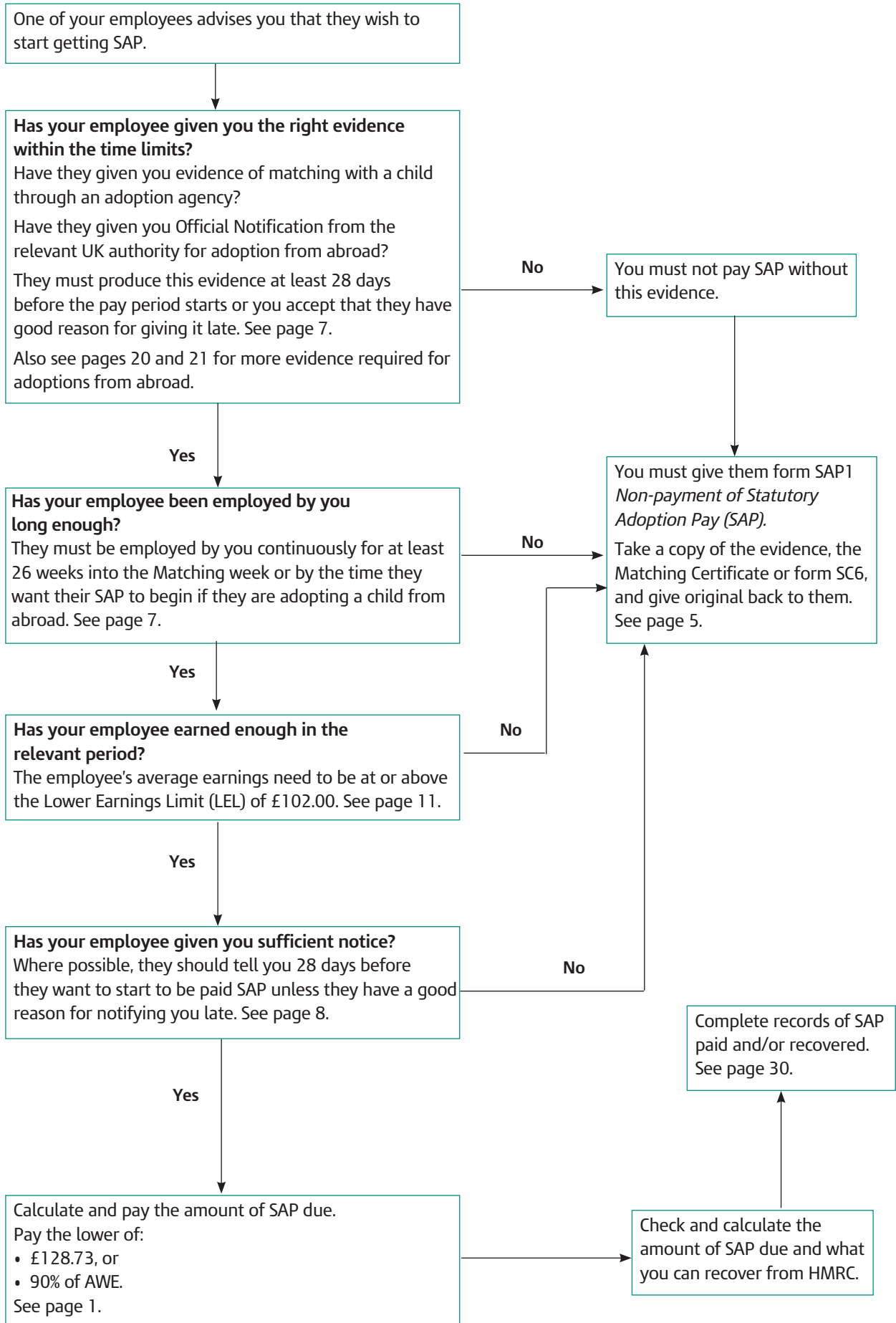
SC6 Statutory Adoption Pay and adoption leave when adopting from abroad

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 Ordinary Statutory Paternity Pay (OSPP) or Additional Statutory Paternity Pay (ASPP). The employee should give it to you as part of the evidence required for SAP.

Flowchart - Operating the SAP scheme



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

Evidence of matching

Your employee must give you documentary evidence that they are adopting a child through an adoption agency to get SAP within the time limits. 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. They must provide evidence at least 28 days before the pay period starts.

Check that the evidence you are given shows the:

- name and address of the adoption agency
- name and address of your employee
- date the child is expected to be placed for adoption, or the date the child was placed for adoption, and
- 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 phone the Employer Helpline on **08457 143 143** for advice.

Employee gives evidence

Go to 'Has your employee been employed by you long enough?' on this page.

Employee does not give evidence

Tell your employee that you cannot pay them without the evidence and that 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 been employed by 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 Matching week. Count part weeks of employment as full weeks.

Find the Matching date in the table on page 32. Then read across to the latest start date for employment with you. If they started work after that date they don't qualify; you must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 Matching week. Tables showing the latest start dates for employment with you are on page 32.

They can get SAP if you were liable to pay Class 1 NICs on their earnings throughout that period.

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

If you were not 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 31), 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 Matching week they can get SAP if:
- they worked for you in the UK in the Matching week, 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 32.

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 please contact Acas at www.acas.org.uk or phone **08457 47 47 47** or in Northern Ireland contact the LRA at www.lra.org.uk or phone **028 9032 1442**, or seek independent legal advice.

Has your employee given you sufficient notice?

Leave

To qualify for adoption leave, your employee should tell you no more than seven days after the Matching date.

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 date they are matched with a child and the date the child is placed. If your employee is late giving you notice because of this you must accept it.

Notice can be given:

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

Choosing dates

Your employee has the right to choose when they want to start their adoption pay and leave. The date cannot be more than 14 days before the expected placement date and must start no later than the date the child is placed, or the day after that if the employee was at work that day.

If the notice was late 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 placed.

Change of mind

Your employee can change their mind about the start date but they 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.

Acknowledging your employee's notice for SAP and leave

You must write to your employee within 28 days of the date they told you when they want to take their adoption leave, to confirm the date:

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

You can find example letters on Business Link go to www.businesslink.gov.uk

Returning after adoption leave

If your employee is returning before the end of their full 52 weeks adoption leave period your employee must give you eight weeks' notice of when they intend to return to work again. If they intend to return later than planned, they must give notice eight weeks before the original return date.

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, you must give them form *SAP1 Non-payment of Statutory Adoption Pay (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

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 adoption leave to confirm the date:

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

You can find example letters on Businesslink go to www.businesslink.gov.uk

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

Has your employee earned enough in the relevant period?

What counts as earnings

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

Average Weekly Earnings (AWE) should include all earnings that attract a Class 1 NICs liability, or would if they were high enough. Such earnings would consist of:

- any salary or wages (including cash allowances - for example, car allowance) and money paid in the period earned outside the relevant period, such as holiday pay, overtime and lump sums paid for arrears of pay
- any other element of the person's earnings which is chargeable to Class 1 NICs (including in very limited circumstances Class 1B)
- shares or share options
- retail and other vouchers (where the cost is taxable under the P11D procedure and subject to Class 1 NICs)
- Statutory Sick Pay
- Statutory Maternity Pay
- Ordinary Statutory Paternity Pay and Additional Statutory Paternity Pay
- Statutory Adoption Pay.

Statutory Adoption Pay (SAP) depends on your employee's AWE in a relevant period. See the quick method on page 11 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 11 and 12.

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

For help online go to Basic PAYE Tools 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 16.

How to work out the relevant period

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

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

- Date 1** the last normal payday on or before the Saturday of the Matching week. This payday will be **Date 1** and is the end of the 'relevant period', and
- Date 2** the last normal payday falling not less than eight weeks before the payday at **Date 1**. **Date 2** will be the day after this payday and is the start of the 'relevant period'.

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

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

Example - weekly paid employee

Employee paid every Friday

Matching week 30/10/11 to 05/11/11

Payday at least eight weeks before 04/11/11 (start of relevant period)

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

Paydays										
09/09	10/09	16/09	23/09	30/09	07/10	14/10	21/10	28/10	04/11	
Earnings										Total
-		140.11	140.00	100.00	120.00	130.00	108.10	130.00	102.00	970.21

The relevant period is therefore from 10 September 2011 to 4 November 2011

AWE - Total earnings £970.21 ÷ 8 = **£121.27625**

Do not round this AWE figure up or down to whole pence.

Example - monthly paid employee

Employee paid on the last working day of month.

Matching week 30/10/11 to 05/11/11

Payday at least eight weeks before 31/10/11

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

Paydays			
31/08/11	01/09/11	30/09/11	31/10/11
Earnings			Total
-		685.75	723.55
			1,409.30

The relevant period is therefore 1 September 2011 to 31 October 2011

AWE - Total earnings = £1,409.30 ÷ 2 x 12 = £8,455.80 ÷ 52 = **£162.61153**

Do not round this AWE figure up or down to whole pence.

Quick method for calculating Average Weekly Earnings (AWE)

If your employee earns:

- less than £97.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- less than £102.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012 they will not qualify for SAP. Go to the 'Does your employee earn enough?' section below.

If your employee sometimes **earns more or less** than £102.00, you must work out their AWE.

Use the weekly checksheet below or the monthly checksheet on page 12.

Checksheet for weekly paid – how to work out AWE

To work out AWE you must:

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

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

1. Enter the Matching date.

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

3. Find the date of the last normal payday on or before that Saturday.
This is the last day of the relevant period.

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

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

6. Divide the figure at 5 by the number of whole weeks in the relevant 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.)

Does your employee earn enough?

If the amount in 6:

- is at least £97.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- is at least £102.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012

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 must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 8 for 'Has your employee given you sufficient notice?'.

Checksheet for monthly paid – how to work out AWE

To work out AWE you must:

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

To work out AWE for employees paid monthly	
1. Enter the Matching date.	<input type="text" value="/ /"/>
2. Find the date of the Saturday on or after the date in 1.	<input type="text" value="/ /"/>
3. Find the date of the last normal payday on or before that Saturday. This is the last day of the relevant period.	<input type="text" value="/ /"/>
4. Count back to the payday at least eight weeks from the date in 3 and come forward one day, for example if the payday is 22 June, enter 23 June. This is the first day of the relevant period.	<input type="text" value="/ /"/>
5. Add together the earnings paid between the dates in 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 is not a whole number of months in the relevant 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 in 7 by 12.	£ <input type="text"/>
9. Divide the figure in 8 by 52.	£ <input type="text"/>
(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.)	

Does your employee earn enough?

If the amount in 9:

- is at least £97.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- is at least £102.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012 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 must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 8 for 'Has your employee given you sufficient notice?'

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

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 employee 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 Matching date.	<input type="text" value="/ /"/>
2. Find the first Saturday on or after the date in 1.	<input type="text" value="/ /"/>
3. Find the date of the last payday on or before that Saturday. This is the last day of the relevant period.	<input type="text" value="/ /"/>
4. Count back to the payday at least eight weeks from the date in 3 and come forward one day, for example, 22 June, enter 23 June. This is the first day of the relevant period.	<input type="text" value="/ /"/>
5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).	<input type="text" value="£"/>
6. Work out the number of days between the dates in 4 and 3 (inclusive).	<input type="text"/>
7. Divide the figure in 5 by the number of days in 6.	<input type="text" value="£"/>
8. Multiply the figure in 7 by 7.	<input type="text" value="£"/>
(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)	

Does your employee earn enough?

If the amount in 8:

- is at least £97.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- is at least £102.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012

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 must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 8 for 'Has your employee given you sufficient notice?'

Directors

Companies incorporated after 1 October 2009

There are new regulations for companies incorporated after 1 October 2009. They provide new Articles of Association for these companies and will:

- apply by default if other Articles are not adopted
- allow its directors to determine a director's remuneration.

Directors can decide what and when to pay remuneration. There is no need for a resolution of the companies shareholders at its Annual General meeting (AGM). In such cases payment of a director's fees will be regarded as earnings for the purpose of entitlement to SAP on the date payment was made.

Companies incorporated before 1 October 2009

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

Paid contractually

If the director is contractually paid a regular salary calculate their AWE like any other employee by using the checksheets on pages 11 and 12.

Paid by a determination of the director's (not a formal vote)

Calculate their AWE by using the Checksheet for directors paid only by a formal vote, on page 15, but use the date monies were paid instead of the date of the shareholders' resolution at the AGM.

Paid both contractually and by formal vote

A director who is paid contractually may also be paid a bonus or fees by a formal vote. You must still calculate their AWE using the checksheets on pages 11 and 12. You should only include the monies voted by formal vote if the date of the vote falls in the relevant period.

Paid only by a formal vote

If the director is paid only by a formal vote calculate their AWE using the checksheet on page 15. A formal vote usually takes place at the company's AGM and is agreed in the company minutes.

Monies drawn in anticipation of a formal vote

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

Checksheet for directors paid only by a formal vote

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

1. Enter the Matching date.

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 relevant period.

4. Count back to the payday at least eight weeks from the date in 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 relevant 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 in 4 and 3 (inclusive). If there is not a whole number of months see 'Rounding to the nearest whole month when there is not a whole number of months in the relevant period' on page 12.

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

8. Multiply the figure in 7 by 12.

9. Divide the figure in 8 by 52.

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

Does your director earn enough?

If the amount in 9:

- is at least £97.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- is at least £102.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012

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 must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 8 for 'Has your employee given you sufficient notice?'

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

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

Follow Steps 1 to 5 of the weekly checksheet on page 11. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

Mistimed payments

It is important that the following provision is only applied to regular payments of earnings paid other than on their normal date for example due to a bank holiday. This type of payment should not be confused with a payroll error. For example a mistake is made in the payroll resulting in a shortfall of pay when working out the AWE in the relevant period.

Follow Steps 1 to 5 of the weekly checksheet on page 11. At Step 6 divide the figure in Step 5 by the number of weeks' wages actually paid.

Employees paid in multiples of a week

Use the weekly checksheet on page 11. At Step 6 you must still divide the figure in Step 5 by the number of whole weeks in the relevant period, even if your employee did not work for some of the weeks.

Employees paid monthly

Use the checksheet on page 12 to work out their AWE.

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(2011) *Employer Further Guide to PAYE and NICs*.

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 after the salary sacrifice during the relevant period. For more information on the rules for salary sacrifice go to www.hmrc.gov.uk/specialist/salary_sacrifice.htm

Contractual benefits

For the purposes of calculating AWE for SAP, the calculation is based on earnings which are subject to NICs. Therefore you must not include the value of any benefits which are exempt from Class 1 NICs (such as some childcare vouchers) in the AWE calculation.

For more information on the treatment of childcare vouchers and other contractual benefits and expenses go to www.hmrc.gov.uk/paye/reporting-az.htm

You must not deduct the value of the childcare vouchers provided during the adoption pay period 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 relevant 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 increases the amount of earnings already paid in the relevant period you must recalculate the employee's AWE and pay the extra SAP due.

If your employee was not entitled to SAP and receives a backdated pay rise which increases the amount of earnings already paid in the relevant period, you must recalculate their AWE to check if they may now be entitled.

Overpayment or underpayment of earnings made during the relevant period

Calculation of AWE is always based on all earnings actually paid within the relevant 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:

- £97.00 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
 - £102.00 gross and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012
- and they received any expenses payments or benefits in kind in the relevant period, which were included in a PAYE Settlement Agreement, you may need to recalculate their AWE.

If any of these expenses 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** recalculate your employee's AWE including these expenses payments and benefits in kind.

PAYE Settlement Agreements are a more flexible way of dealing with some expenses 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(2011) *Employer Further Guide to PAYE and NICs*.

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

If you had to recalculate 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 relevant period for working out their AWE, and
- their AWE is less than £102.00 you **must** recalculate their AWE, as shown below.

Recalculating your employee's AWE

Step 1

Recalculate their average earnings using the earnings paid in the relevant period as increased by the backdated pay rise. **Do not include** any PAYE Settlement Agreement earnings, expenses payments and benefits in kind at this stage.

If the new AWE amount is at least:

- £97.00 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
 - £102.00 gross and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012
- 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 recalculated 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

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

If the new AWE amount is at least:

- £97.00 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2010 and 2 April 2011, or
- £102.00 gross and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012

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.

You must give them form SAP1 *Non-payment of Statutory Adoption Pay (SAP)*. Take a copy of the evidence they got from the adoption agency and give the original back to them.

Exceptions to the 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 will still be eligible for SAP if they leave or stop working for you after they have been matched with a child.

It does not matter why they left or that they are not coming back – they are entitled to SAP if they satisfy the qualifying conditions.

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 child is expected to be 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.

They will not be eligible for any week in which they work for a new employer they weren't employed by in the Matching week.

Reinstatement after dismissal

If they did not work for you during the whole period you worked out using page 7:

- 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 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 32.

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 7:

- 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 Matching week. 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 32.

All the other rules apply.

Breaks in employment

For SAP purposes, the employee must have been continuously employed by you for at least 26 weeks into the Matching week. To work out the latest start date for employment with you use the table on page 32.

If your employee with an ongoing contract of service, has a break in employment for any of the reasons below, you should still treat them as continuously employed:

- Temporary cessation of work – including short-term contract or agency workers.
- Public holidays – the employee can still get SAP.
- Sickness or injury – the employee can get SAP if the total period of incapacity is 26 weeks or less.
- Maternity leave – she works for you before and after the break she can get SAP 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.
- Adoption leave – they were on adoption leave and they worked for you before and after the break.
- Paternity and parental leave – if the employee took paternity leave or parental leave when they were adopting a child or when a baby was born and they worked for you before and after the break they can get SAP.

Trade disputes or industrial action

Your employee must have been continuously employed by you for at least 26 weeks into the Matching week.

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

All other rules for SAP 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 go to:

- www.businesslink.gov.uk/employingpeople under Managing change, Responsibilities to employees, if you buy and sell a business
- Acas at www.acas.org.uk phone **08457 47 47 47**
- in Northern Ireland contact the LRA at 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.

If continuity of employment is not broken, the employee can get SAP, as long as they work for you and the previous employer during the whole period you worked out using page 7.

If continuity of employment is broken and:

- you take on the business after the start of the Matching week, 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
- you take on the business before the start of the Matching week, the employee cannot get SAP, you must give them form SAP1 *Non-payment of Statutory Adoption pay* as soon as possible.

All other rules apply.

Tables showing the latest start date for employment with you are on page 32.

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.

The adopter must be assessed and approved as an adopter in the UK. The assessment is usually carried out by 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 when they have done this to the adopter. The relevant UK authority will be the Department for Education (DfE) (in England), the Scottish Executive, the Welsh Assembly or the Northern Ireland Assembly.

The adopter 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 employee will need to keep this document so you should take a copy for your records.

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) whichever is later.
- 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, they must declare that they are not also claiming Ordinary Statutory Paternity Pay (OSPP) and/or Additional Statutory Paternity Pay (ASPP).
- 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 you must give them form SAP1 *Non-payment of Statutory Adoption Pay (SAP)*.

Adoption from abroad which does not include a relevant UK authority

An employee or their partner may have adopted a child from abroad without the involvement of 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

Notice

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 Ordinary Statutory Paternity Pay (OSPP) and/or Additional Statutory Paternity Pay (ASPP). Form SC6 is available for this purpose, or you may use your own form, see page 5.

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 that 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 52 weeks.
- A week is any continuous period of seven 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.

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 ex-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. But, 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 during the adoption pay period. They must give HMRC evidence of entitlement.

If the adopter is now with a new employer and has completed 26 weeks continuous employment with the new employer to requalify for SAP and adoption leave, it is up to the new employer to pay SAP, you are no longer liable.

Paying SAP

Start of payment

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

The adoption pay period can start on any day of the week, 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 8.

You should pay SAP 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 two days at the end of April and five days at the start of May, then pay two-sevenths in one month and five-sevenths the next month.

Employee goes abroad

If your employee leaves the UK during their SAP pay period, for example, to go on holiday or visit relatives living abroad, you are still liable to pay SAP during their absence.

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 the following pages.

Keeping in Touch (KIT) days

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 day's 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 of 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 at least 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 more information about NMW phone the free Pay and Work Rights Helpline on **0800 917 2368**.

Keeping in Touch (KIT) days example

An employee works Monday to Friday, the Adoption Pay Period is 2 March 2011 to 29 November 2011 and the SAP pay week is a Wednesday to Tuesday.

- They return to work for six days Monday to Wednesday, 29 August 2011 to 31 August 2011, and
- Monday to Wednesday, 5 September 2011 to 7 September 2011.

The SAP pay weeks for this period are:

- 24 August 2011 to 30 August 2011 (two KIT days),
- 31 August 2011 to 6 September 2011 (three KIT days),
- 7 September 2011 to 13 September 2011 (one KIT day).

They then work for five days Monday to Friday, 24 October 2011 to 28 October 2011.

SAP pay weeks for this period are:

- 19 October 2011 to 25 October 2011 (two KIT days),
- 26 October 2011 to 1 November 2011 (two KIT days, one non-KIT day).

SAP is payable for all of the above SAP pay weeks except for the pay week 26 October 2011 to 1 November 2011 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 more 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 Matching week.

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 Matching week, you should continue to pay them SAP as normal.

If your employee is working for someone **they did not work** for during the Matching week, you must stop paying SAP from the start of the SAP pay week they work for that employer.

You must give them form SAP1 *Non-payment of Statutory Adoption Pay (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.

You must give them form SAP1 *Non-payment of Statutory Adoption Pay (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(2011) *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.

You must give them form SAP1 *Non-payment of Statutory Adoption Pay (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 HMRC Statutory Payments Dispute Team on **0191 22 55221**. It will help if you or the administrator, liquidator or other similar officer can let us know which of your employees are affected so that we can pay them as soon as possible.

Paying through an agent

You can arrange for an insurance company, friendly society, payroll service or other third party to pay SAP. But, 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 9.

If they are only 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, but see KIT days on page 23.

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

Non-cash payments

You may pay some of your employee's earnings as a non-cash payment, for example providing board and lodging or giving them goods or services. But, you must pay any SAP in full, SAP cannot be sacrificed or offset against other benefits, it must be paid in cash.

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

Lump sums

If you do decide to pay the SAP as a lump sum, you and your employee could pay more National Insurance contributions (NICs) than if you paid it on their normal payday. See Employer Helpbook E13(2011) *Day-to-day payroll* and the CWG2(2011) *Employer Further Guide to PAYE and NICs*, 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 National Insurance Fund in the normal way.

But, 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 30.

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. If a separate Matching Certificate is issued this would be considered as a separate arrangement.

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.

But, 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

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.

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

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 below.

Penalties

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

- 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 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.
- 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.
- The provision of incorrect information either fraudulently or negligently to your employee, could make you liable to a penalty up to a maximum of £3,000.
- Obtaining either fraudulently or negligently incorrect funding could make you liable to a penalty up to a maximum of £3,000.
- Anyone who fraudulently or negligently makes an incorrect statement or declaration to establish entitlement to 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.

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

Recovering SAP

How much can I get back?

The amount you get back normally depends on your total gross, employer's plus employee's, Class 1 NICs in the last complete tax year before the 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 2011-12 is 3%.

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

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.

You can only recover the amount of SAP payable, any additional Occupational Adoption Pay (OAP) is not recoverable over and above the SAP.

Where does the money come from?

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

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

You may also need to use this money to pay other statutory payments. Please make sure that you have enough to cover all the payments you have to make. Use the quick checksheet on page 29.

If you were not an employer for the whole of 2009-10 and 2010-11

If you only had part-year or no annual liability for Class 1 NICs for the previous tax year and this could be **either more or less than £45,000** you will need to check whether it is £45,000, more than £45,000 or less than £45,000.

Check which tax year you need to look at depending on the 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 4 April 2010 and 2 April 2011 check your liability for 2009-10
- if the adoption agency told the adopter that they have been matched with a child between 3 April 2011 and 31 March 2012 check your liability for 2010-11.

Checksheet – if you were not an employer for the whole of 2009-10 and 2010-11

Checksheet – if you were not an employer for the whole 2009-10 and 2010-11 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
- 3% 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 Matching date.	<input type="text" value="/ /"/>
2. Find the date of the first Sunday on or before the date in 1.	<input type="text" value="/ /"/>
3. Enter the tax year in which the Sunday falls.	<input type="text"/>
4. Enter the tax month before this Sunday. Remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
5. Add together your liability for Class 1 NICs between the start of the tax year you entered in 3, or the first month for which you were liable for Class 1 NICs , and the tax month you entered in 4, inclusively.	<input type="text" value="£"/>
6. Work out the number of tax months between the start of the tax year you entered in 3, or the first tax month for which you were liable for Class 1 NICs , and the tax month you entered in 4, inclusive.	<input type="text"/>
7. Divide the figure in 5 by the figure in 6.	<input type="text" value="£"/>
8. Multiply the figure in 7 by 12.	<input type="text" value="£"/>

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

- 100% of the SAP, and
- 3% 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.

Recovery of SAP that has been paid in a previous tax year

If you need to recover SAP that you have **paid** in a previous tax year, you cannot claim this from your HMRC accounts office.

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

You can also get these by phoning the Employer Orderline on **08457 646 646**.

Send the completed form SP32 to:

HM Revenue & Customs
National Insurance Contributions and Employer Office (NIC&EO)
Refunds Group Contributor Group
Room BP1001
Benton Park View
Newcastle Upon Tyne
NE98 1ZZ

Get help with statutory payments funding

Advance funding

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

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

A quick checksheet to see if you need advance funding

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

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

Applying for advance funding

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

Statutory payment relevant to the current tax year:

You can apply online at www.hmrc.gov.uk/payee/employees/statutory-pay/funding.htm providing the information set out in the quick checksheet above and ask for advance funding.

Statutory payment relevant to a previous tax year:

If the SAP is relevant to a previous tax year you cannot apply online, you must write to your HMRC accounts office. You should tell them the information set out in the quick checksheet above and ask for advance funding. You should record the payments of SAP as normal. See 'Recording payments of SAP' on page 30.

No PAYE payment to make

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

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

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

Keeping records

What you must keep

You must keep:

- the evidence the adoption agency gave your employee. If you give this back to your employee with form SAP1 *Non-payment of Statutory Adoption Pay (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 *Statutory Adoption Pay (SAP) record sheet*, which is available on the HMRC website at www.hmrc.gov.uk/paye/forms-publications.htm or from the Employer Orderline **08457 646 646**, to help you keep a record of your payments.

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

Recording payments of 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 *Deductions Working Sheet* or P12 Simplified Deduction Scheme card, or computerised equivalent. You will need to record the amount of SAP you have paid and recovered when you complete your Employer Annual Return (P35 and P14s) at the end of the tax year. Helpbook E13(2011) *Day-to-day payroll* tells how to complete your employee's form P11.

For more information on keeping records go to Helpbook E10(2011) *Finishing the tax year up to 5 April 2011* and Helpbook E11(2011) *Starting the tax year 6 April 2011* on the HMRC website at 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 29.

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 HMRC accounts office.

Recording advance payments

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

Any advance 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 tax year you must:

- put it right
- correct your records, payments and deductions from money due to your HMRC accounts office.

Remember that one period of adoption may affect a later one.

If you have made an error in an earlier tax year, phone the Employer Helpline on **08457 143 143**. They will tell you what to do to correct it. See CWG2(2011) *Employer Further Guide to PAYE and NICs*, for information on how to correct errors in recording NICs.

You may recover any wrongly paid SAP from your employee. You should treat this as you would an underpayment or overpayment of wages or salary, and record it as wages or salary, not SAP.

Errors on returns and documents

You need to be aware that there is a penalty regime for errors on returns and documents. For more information see page 26.

A list of the European Economic Area (EEA) countries

Countries within the EEA are:

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark, excluding Faroe Islands
- Estonia
- Finland
- France, including Guadeloupe, Martinique, Guiana, Réunion, Corsica and Saint-Pierre et Miquelon
- Germany
- Gibraltar
- Greece, including Macedonia, Thrace, Epirus, Thessaly, Continental Greece, the Peloponnese, the Dodecanese, the Cyclades, the Ionian Islands, the Aegean Islands and Crete
- Hungary
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland - Although Switzerland is neither an EU Member State nor an EEA country they apply the EC rules by virtue of a special agreement.
- 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

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

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



There are legal requirements that mean employers must comply with their obligations. At the time of writing, this guide sets out HMRC's view on how these legal requirements can be met. It will be updated annually and was last updated December 2010.

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