

# Employer Helpbook for Ordinary and Additional Statutory Paternity Pay

To use for employees whose babies are born or have children placed with them for adoption on or after 1 April 2012

Includes new rates from 1 April 2012

## Help and guidance

Help and guidance is available from the following sources.

### The internet

For help with payroll go to [www.businesslink.gov.uk/paye](http://www.businesslink.gov.uk/paye)

For wider interactive business help go to [www.businesslink.gov.uk/mynewbusiness](http://www.businesslink.gov.uk/mynewbusiness)

### Online services

For more information and help using our online services go to [www.hmrc.gov.uk/online](http://www.hmrc.gov.uk/online)

For more help contact the Online Service Helpdesk by:

- email [helpdesk@ir-efile.gov.uk](mailto:helpdesk@ir-efile.gov.uk)
- phone **0845 60 55 999**, or
- textphone **0845 366 7805**.

### Basic PAYE Tools

The Basic PAYE Tools contains a number of calculators and most of the forms 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 P11D Working Sheets.

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

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

To download the Basic PAYE Tools, go to [www.businesslink.gov.uk/basicpayetools](http://www.businesslink.gov.uk/basicpayetools)

### Employer helplines

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

### Employer helpbooks and forms

Helpbooks and forms are available to download. Go to [www.businesslink.gov.uk/payeformsandpublications](http://www.businesslink.gov.uk/payeformsandpublications)

### Yr Iaith Gymraeg

I lawrlwytho ffurlenni a llyfrynnau cymorth Cymraeg, ewch i [www.hmrc.gov.uk/cymraeg/employers/emp-pack.htm](http://www.hmrc.gov.uk/cymraeg/employers/emp-pack.htm) Os, yn eithriadol, nad oes gennych gysylltiad i'r rhynggrwyd, cysylltwch â'r Ganolfan Gyswllt Cymraeg ar **0845 302 1489**.

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

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

### In person

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

- go to [www.hmrc.gov.uk/bst](http://www.hmrc.gov.uk/bst) or
- phone our Business Education & Support Team on **0845 603 2691**.

### Employer Bulletin online

Employer Bulletins contain information and news for employers. We publish these several times a year. Go to [www.businesslink.gov.uk/employerbulletin](http://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](http://www.businesslink.gov.uk/hmrcemployeremailalerts)

### Your HM Revenue & Customs (HMRC) office

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

Or write to HMRC at

Customer Operations Employer Office

BP4009

Chillingham House

Benton Park View

NEWCASTLE

NE98 1ZZ

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

### Real Time Information (RTI)

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

### Your rights and obligations

*Your Charter* explains what you can expect from us and what we expect from you. For more information go to [www.hmrc.gov.uk/charter](http://www.hmrc.gov.uk/charter)

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# Overview of the OSPP Scheme

## Quick guide

This is a high level overview of the OSPP process. A list of frequently asked questions is also provided (see page 5).

### Important

As a result of the introduction of Additional Statutory Paternity Pay (ASPP), Statutory Paternity Pay has been renamed Ordinary Statutory Paternity Pay (OSPP).

## Ordinary Statutory Paternity Pay (OSPP)

OSPP is paid to an employee by their employer in the same way as wages. OSPP is paid for one or two whole weeks at the lower of £135.45 or 90% of Average Weekly Earnings (AWE) for pay weeks commencing on or after Sunday 1 April 2012.

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

For examples look on Basic PAYE Tools, go to [www.hmrc.gov.uk/payee/basic-payee-tools.htm](http://www.hmrc.gov.uk/payee/basic-payee-tools.htm)

## OSPP start and end dates

Your employee has the right to choose when they want to take pay and leave within a set period. They can choose to take one or two consecutive weeks leave, but not two separate weeks.

OSPP for birth should be taken:

- any time up to eight weeks after the date of birth, or
- if the baby was born early, up to eight weeks after the Sunday of the week in which the baby was due.

OSPP for adoption should start:

- on the date the child is placed, or the day after that if they were at work that day, or
- at a predetermined date later than above, but ending not more than eight weeks after the date the child is placed with the adopter.

More detailed information on paying OSPP can be found on pages 12 and 13.

## Qualifying rules

The employee must:

- give you the right evidence 28 days before the start of the OSPP pay period (see page 7)
- have been employed by you continuously for
  - at least 26 weeks into the Qualifying Week and continue to work for you right up until the date the baby is born or
  - at least 26 weeks into the Matching Week and continue to work for you until the date the child is placed with the adopter (see page 8)
- have AWE which are not less than the Lower Earnings Limit (LEL) (see page 9)
- normally give at least 28 days notice before they want to start to be paid OSPP (see page 12).

## Forms you may need to use

HMRC forms are available from:

- [www.hmrc.gov.uk/payee/forms-publications.htm](http://www.hmrc.gov.uk/payee/forms-publications.htm)
- [www.direct.gov.uk](http://www.direct.gov.uk)

You can use your own version of any of the forms.

There is no formal approval process for your own forms but you must include all of the same information as you do on the approved HMRC forms.

### SC3 *Becoming a parent*

You may use this form to tell your employee about the terms and conditions relating to OSPP. This includes a statement for your employee to tell you about dates and leave, with a declaration. You must have this declaration before you can make payments.

### SC4 *Becoming an adoptive parent*

You may use this form to tell your employee about the terms and conditions relating to OSPP. This includes a statement for your employee to tell you about dates and leave, with a declaration. You must have this declaration before you can make payments.

### SC5 *Ordinary Statutory Paternity Pay and ordinary paternity leave when adopting from abroad*

You may use this form to tell your employee the terms and conditions relating to entitlement to OSPP and ordinary paternity leave when adopting from abroad. This includes a statement for your employee to tell you about dates and leave, with a declaration. You must have this declaration before you can make payments.

### OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*

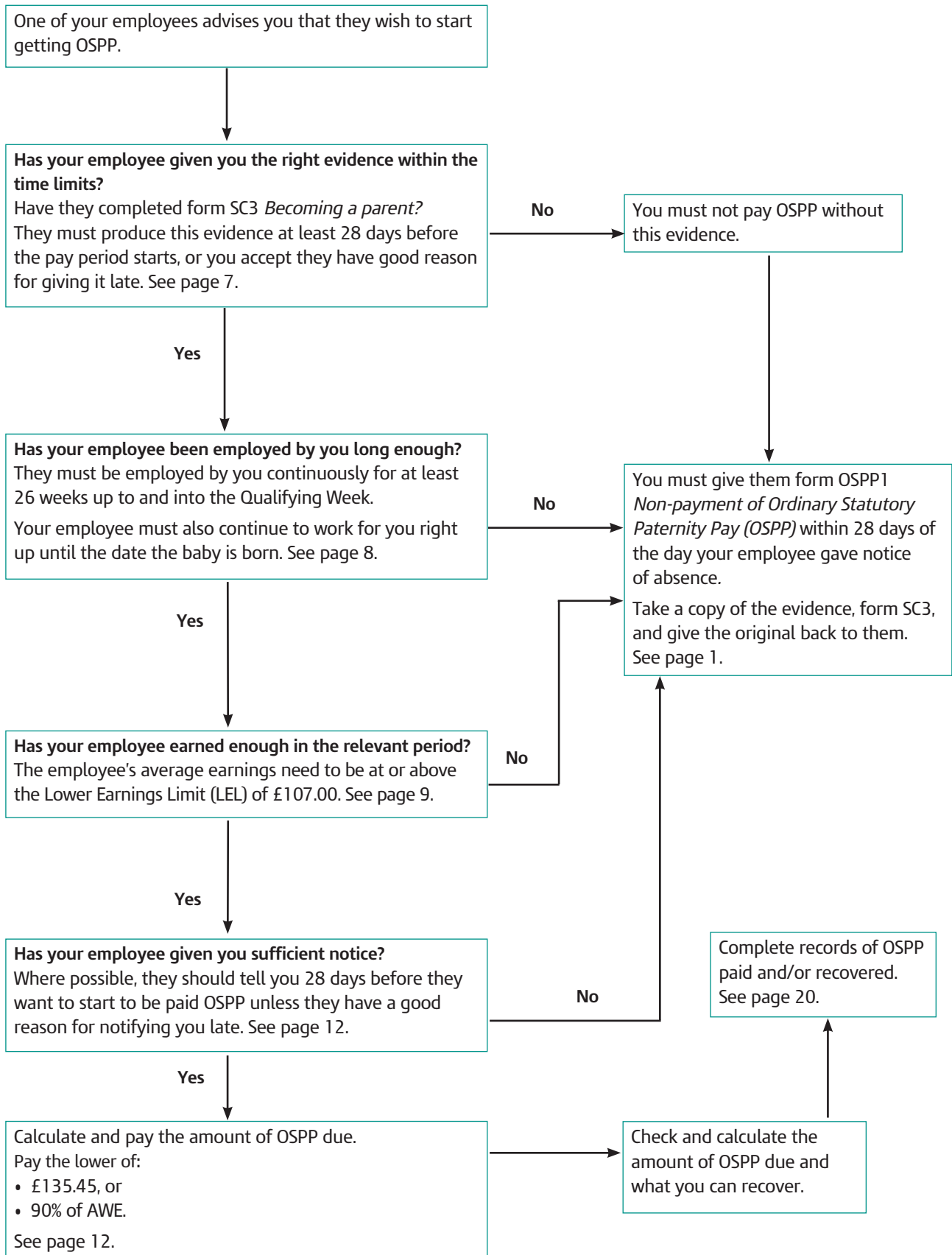
Use this form to tell your employee why they are not entitled to OSPP. You must give this form to your employee:

- for OSPP (birth), within 28 days of the day your employee gave notice of absence
- for OSPP (adoption), within 28 days of the end of the seven-day period that starts on the date on which the adopter is notified of having been matched with the child.

### OSPP2 *Ordinary Statutory Paternity Pay record sheet*

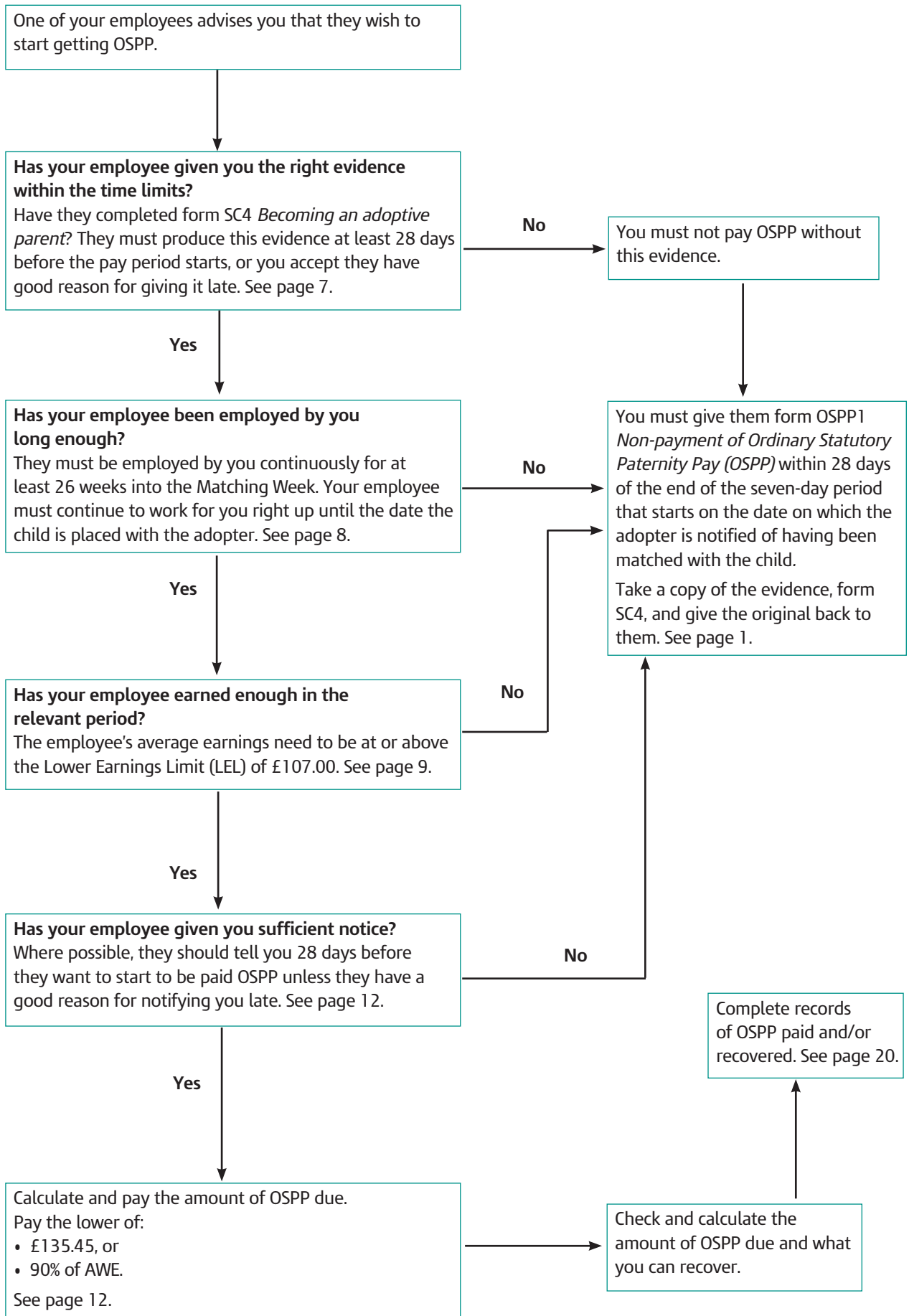
Use this form to keep a record of statutory paternity payments and any changes in dates.

# Flowchart - Operating the OSPP Scheme for birth





# Flowchart - Operating the OSPP Scheme for UK adoption



## Terms used in this helpbook

### Employee

For OSPP purposes an **employee** is a person whose earnings attract a liability for employer's secondary Class 1 National Insurance contributions (NICs), or would do but for your employee's age or level of their earnings. People who are classed as employed earners for Class 1 NICs liability, for example, agency workers, are also employees for OSPP purposes.

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 OSPP purposes.

### Employer

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

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 OSPP then you will be responsible for making the OSPP payments.

There has been a change to the NICs rules for employees who move around the EEA. More information can be found at [www.hmrc.gov.uk/nic/work/new-rules.htm](http://www.hmrc.gov.uk/nic/work/new-rules.htm)

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

### Lower Earnings Limit (LEL)

This is the minimum level of earnings that an employee needs to qualify for some benefits. It is also the minimum level that an employee's Average Weekly Earnings (AWE) must reach in a specific period to qualify for OSPP. For 2012-13 the LEL is £107.00 weekly.

### Ordinary Statutory Paternity Pay (OSPP)

This is a legal entitlement to a certain amount of pay to help an employee take time off to care for a baby or support the mother in the first few weeks after the birth, or to help an employee take time off after a child is placed with the adopter.

OSPP for birth of a child is available to an employee who is a:

- biological father
- mother's husband, civil partner or partner (this includes mother's female partner in a same sex relationship), and who is taking time off to support the mother or care for the baby.

OSPP for adoption of a child is available to an employee who is:

- someone adopting a child with their partner, or
- the partner of someone adopting a child on their own and the adoption is being arranged through an adoption agency in the UK, or for adoption from abroad the adopter has received Official Notification (see page 14).

It is not available to someone who is a blood relative of the adopter, such as the adopter's parent, grandparent, sister, brother, aunt or uncle or for privately arranged adoptions that do not involve the UK authorities.

### Ordinary paternity leave

The employee can choose to have one or two whole weeks pay and leave. This must be taken in a single block by the 56th day either:

- after the date of birth or if the baby is born early it can be taken any time from the actual date of birth to the end of an eight-week period running from the day after the Sunday of the week the baby was due, or
- from the date the child is placed for adoption or enters the UK.

An employee does not have to qualify for OSPP to get ordinary paternity leave, but most will get both.

### Matching Date

The Matching Date is when the adoption agency told the employee that he or she had been matched with a child.

### Matching Week

The Matching Week is the week when the adoption agency told the employee that he or she had been matched with a child.

### Week baby due

The week baby due is the week in which the expected date of the baby's birth falls, starting with the preceding Sunday and ending on the following Saturday. If the birth date falls on a Sunday, that date is the first day in the week baby due.

### Qualifying Week

The Qualifying Week is the 15th week before the week baby due, see tables on pages 55 and 56.

### 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.

## Frequently asked questions

### How do I calculate OSPP?

If your employee meets all the qualifying conditions, you should pay them the lower of either the standard rate which is currently £135.45 or 90% of the employee's AWE. They may choose to take one or two consecutive weeks leave but not two separate weeks. The OSPP calculator will help you to work out if you have to pay OSPP to your employee and how much you should pay. It will also help you to work out how much OSPP funding you can get. The OSPP calculator is available on our website, go to [www.hmrc.gov.uk/calcs/sppb.htm](http://www.hmrc.gov.uk/calcs/sppb.htm) or [www.hmrc.gov.uk/calcs/sppa.htm](http://www.hmrc.gov.uk/calcs/sppa.htm) It is also available on Basic PAYE Tools.

### What information do I need from my employee?

The employee must give you a declaration of family commitment which should be signed and returned to you. You can use form *SC3 Becoming a parent* or *SC4 Becoming an adoptive parent*. Your employee does not need to provide you with a copy of the MATB1 or the matching certificate.

### What records should I keep?

You must keep the declaration of family commitment, records of the payment dates and amount paid, the date the pay period began, a record of any unpaid OSPP and the reasons for non-payment. See 'Keeping records' on page 20.

### What do I do if my employee is not entitled to OSPP?

If your employee does not meet all the qualifying conditions you do not have to pay OSPP. Instead you should return the declaration of family commitment to your employee after taking a photocopy for your records. You must complete form OSPP1, which explains why you cannot pay them OSPP, and give it to your employee:

- for OSPP (birth), within 28 days of the day your employee gave notice of absence
- for OSPP (adoption), within 28 days of the end of the seven-day period that starts on the date on which the adopter is notified of having been matched with the child.

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

You can ask your HMRC accounts office to pay you an advance of the amount you need to pay your employee's OSPP. See 'Get help with statutory payments funding' on page 19.

### Can I recover the OSPP paid to my employees?

Yes, but the amount you get back depends on your total gross NICs liability you pay us. See 'Recovering OSPP' on page 16.

## General information

### Further help

For more information about Ordinary Statutory Paternity Pay (OSPP) you can:

- contact the Employer Helpline for advice about entitlement to OSPP and what your employee can do if they disagree with your decision not to pay OSPP
- get advice at

**[www.hmrc.gov.uk/payee/employees/statutory-pay](http://www.hmrc.gov.uk/payee/employees/statutory-pay)**

An employee who is not entitled to OSPP may be entitled to other government help. Please tell them to contact their local Jobcentre Plus office or in Northern Ireland the Jobs and Benefits office.

Throughout this helpbook further references to the Advisory, Conciliation and Arbitration Service (Acas) will be referred to as Acas, go to **[www.acas.org.uk](http://www.acas.org.uk)** and in Northern Ireland reference to Labour Relations Agency (LRA) will be referred to as LRA, go to **[www.lra.org.uk](http://www.lra.org.uk)**

### 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 OSPP and ordinary paternity leave schemes
- guidance on employment law and paternity leave is produced by the Department for Employment and Learning, see *The Phone Book* for contact details or go to **[www.delni.gov.uk](http://www.delni.gov.uk)**
- if your employee lives in the Republic of Ireland please contact the Employer Helpline on **08457 143 143**
- guidance on employment law is covered by the LRA. For more information go to **[www.lra.org.uk](http://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 call on you we will ask to see your OSPP records.

### Employment rights

Employees who exercise their rights to OSPP and ordinary paternity leave have a legal right to:

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

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

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

### Pay

As you work through the terms and conditions, if you decide that your employee is not entitled to OSPP you will be told to issue a form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*. This will explain to your employee why you cannot pay them and what they need to do to get other Government help. It is important that you give them this form as soon as possible to help them with their claim. If your employee disagrees they can ask us to give a formal decision. If this happens we will give you more information at the time.

### Leave

If there is disagreement between you and your employee about their entitlement to leave or other employment provisions, you will want to discuss it together first. You will probably also find it helpful to contact Acas at **[www.acas.org.uk](http://www.acas.org.uk)** or phone **08457 47 47 47** or in Northern Ireland contact the LRA at **[www.lra.org.uk](http://www.lra.org.uk)** or phone **028 9032 1442**. Ultimately, if the dispute continues, your employee may want to take the case to an employment tribunal.

### Redundancy

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

### For couples adopting together

If your employee is adopting the child with their partner, the couple must choose who gets the Statutory Adoption Pay (SAP) and adoption leave (see Employer Helpbook E16(2012) *Employer Helpbook for Statutory Adoption Pay*) and who gets the OSPP and ordinary paternity leave. Information on the evidence required is on page 7.

### Foster carers

OSPP and ordinary paternity leave may be available to foster carers who go on to adopt a child only 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.

## Operating the OSPP Scheme

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

### Declaration of family commitment – becoming a parent

Give the employee form SC3 *Becoming a parent* or SC4 *Becoming an adoptive parent* which advises them of the terms and conditions relating to OSPP and ordinary paternity leave.

It also has a section for a declaration of family commitment.

You must not pay OSPP without a declaration.

**The employee is not required to provide medical evidence of the pregnancy.**

#### Employee gives declaration

See the 'Length of employment' section on page 8.

#### Employee does not give declaration

Tell your employee that you cannot pay them without the declaration and they will need a good reason if the declaration is made 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, provided the evidence is produced by the end of the OSPP period.

Please note that sometimes there is very little time between the date the adoption agency tells the adopter 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

The length of time your employee must have worked for you to get OSPP and ordinary paternity leave is split into two and both conditions must be met.

#### Birth

Tables showing the week baby due date, the latest start date for employment with you and the Qualifying Week are on pages 55 and 56.

#### Step 1

The employee must be continuously employed from the latest start date for employment with you. If they started work after that date they do not qualify. You must give your employee form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC3 *Becoming a parent*, and give the original back to them.

#### Step 2

The employee must continue to work for you in every week from the Qualifying Week right up until the baby is born. If they stop working for you before the baby is born they are not entitled to OSPP or ordinary paternity leave.

#### Adoption

A table showing the Matching Week and the latest start date for employment with you is on page 57.

#### Step 1

Find the Matching Week in the table 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 OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC4 *Becoming an adoptive parent*, and give the original back to them.

#### Step 2

If your employee was working for you by the date in Step 1, then to get OSPP and ordinary paternity leave they must continue to work for you right up until the child is placed with the adopter. If your employee stops working for you before the child is placed with the adopter, they are not entitled to pay or leave.

### Employee works abroad

Where your employee works for you **outside the UK**:

- from the latest start date for employment with you, **and**
- up to and including the Sunday of the Qualifying or Matching Week, **and**
- continues to work for you until the baby is born or the child is placed for adoption

they can get OSPP if you are liable to pay Class 1 NICs on their earnings throughout the period. They can still get OSPP if you would have been liable to pay Class 1 NICs had their earnings been high enough.

If you are not liable to pay Class 1 NICs, then normally your employee is not entitled to OSPP. However, if you are not liable to pay Class 1 NICs and your employee works for you in the EEA they may still be able to get OSPP (for a list of EEA countries, see page 54).

Where your employee works for you **within the EEA**:

- from the latest start date for employment with you, **and**
  - up to and including the Sunday of the Qualifying or Matching Week, **and**
  - continues to work for you until the baby is born or the child is placed for adoption
- they can get OSPP if
- they worked for you in the Qualifying or Matching Week, **and**
  - you were liable to pay Class 1 NICs on their earnings for that week.

For the period after the Qualifying or Matching Week the employment can be in either the UK or EEA.

All other OSPP rules apply.

#### Leave

Employees who work outside the UK but within the EEA may be entitled to ordinary paternity leave under UK law. For more information please contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**, or seek independent legal advice.

## 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. 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 period, such as holiday pay, overtime and lump sums paid for arrears of pay
- any other element of the person's earnings which are chargeable to Class 1 NICs (including in very limited circumstances Class 1B)
- share 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 (SSP)
- Statutory Maternity Pay (SMP)
- Ordinary and Additional Statutory Paternity Pay (OSPP/ASPP)
- Statutory Adoption Pay (SAP).

OSPP depends on your employee's AWE in a relevant period. See the quick method on pages 21 and 22 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 using the relevant checklist on pages 21 to 26. When you work out how much you pay, look at when the pay week began.

For help go to Basic PAYE Tools where you will find a calculator and a learning program to help you understand your OSPP responsibilities.

Where a salary sacrifice arrangement is in place see paragraph on page 30.

## How to work out the relevant period for birth

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 Qualifying 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**.

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

It is the period between the last normal payday:

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

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

### Example - weekly paid employee

Employee paid every Friday

Date baby due 12/02/13

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

Payday at least eight weeks before 02/11/12

Start of the relevant period - Date 2

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

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

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

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

Date baby due 12/02/13

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

Payday at least eight weeks before 31/10/12

Start of the relevant period - Date 2

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

Paydays				Total
31/08/12		01/09/12	31/10/12	
Earnings				Total
-		685.75	723.55	

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

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

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



## How to work out the relevant period for adoption

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 or late in a particular week or month.

### Example - weekly paid employee

Employee paid every Friday

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

Payday at least eight weeks before 02/11/12

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

Start of the relevant period - Date 2		Paydays									Last payday on, or before, Saturday of the Matching Week (end of relevant period - Date 1)	
07/09	08/09	14/09	21/09	28/09	05/10	12/10	19/10	26/10	02/11			
Earnings											<b>Total</b>	
-	140.11	140.00	100.00	120.00	130.00	108.10	130.00	102.00			970.21	

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

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 28/10/12 to 03/11/12

Payday at least eight weeks before 31/10/12

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

Start of the relevant period - Date 2		Paydays		Last payday on, or before, Saturday of the Matching Week (end of relevant period - Date 1)	
31/08/12	01/09/12	30/09/12	31/10/12		
Earnings				<b>Total</b>	
-		685.75	723.55	1,409.30	

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

AWE - Total earnings = £1,409.30 ÷ 2 = £704.65 × 12 = £8,455.80 ÷ 52 = **£162.61153**

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

## Has your employee given you sufficient notice?

### Leave (birth)

To qualify for ordinary paternity leave your employee should tell you when they expect to stop work by the Saturday of the Qualifying Week (use tables on pages 55 and 56). You can ask for this notice in writing.

### Pay (birth)

Your employee should give you 28 days notice for start of pay.

Notice for pay must include:

- expected date of birth and, where the birth has already occurred, the actual date of birth
- the date from which it is expected that pay will begin
- whether one or two weeks will be taken.

Notice for pay **must** be made in writing.

You should accept any delay in giving notice if the employee has good reason. Employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and the actual date of birth.

### Leave (adoption)

To qualify for ordinary paternity leave, your employee should tell you when they want to take their leave within seven days of the Matching Date. You can ask for this notice in writing.

### Pay (adoption)

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

## Choosing dates

Your employee has the right to choose when they want to take pay and leave within a set period. They can choose to take one or two consecutive weeks leave, but not two separate weeks.

For OSPP (birth) leave must be taken:

- any time up to eight weeks after the date of birth, or
- if the baby was born early, up to eight weeks after the Sunday of the week in which the baby was due.

For OSPP (adoption) leave can start:

- on the date the child is placed, or the day after that if they were at work that day, or
- at a predetermined date later than above, but it cannot continue for more than eight weeks after the date the child is placed with the adopter.

## Change of mind

Your employee can change their mind about the date they wish their leave to start but should give you 28 days notice of their intended dates. You can accept less notice if you wish. Employers should allow sufficient flexibility of notice because of:

- the possible differences between the expected date of birth and the actual birth, or
- the possible differences between the expected date of placement and the actual date of placement.

## Employee does not give acceptable notice

### Pay and leave

If your employee did not give you acceptable notice and they have not got a good reason for being late, you can delay the start of leave and the pay period until you have had acceptable notice. However, employers should allow sufficient flexibility of notice because of the possible differences between the expected date of birth and the actual date of birth.

If your employee didn't give acceptable notice you must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*:

- for OSPP (birth), within 28 days of the day your employee gave notice of absence
- for OSPP (adoption), within 28 days of the end of the seven-day period that starts on the date on which the adopter is notified of having been matched with the child.

Take a copy of the evidence they give you and return the original.

## Paying OSPP

### Start of payment

OSPP is a weekly payment. It lasts for one or two complete weeks and the two weeks must be consecutive. It is paid at the lower of £135.45 or 90% of AWE. It should be made on the employee's next usual payday on or after the last day of their pay week.

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

The OSPP period starts the day after the last day your employee worked before starting their ordinary paternity leave. Your employee will have told you when they planned to stop work.

OSPP should be paid in the same way as you would pay earnings and for the same period. All the usual deductions apply, including PAYE tax and NICs, 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).

## OSPP paid part-weekly

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

## Employee goes abroad

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

## Employee is not returning to work

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

**You cannot ask them to repay it.**

## When does OSPP stop?

### Birth

- If your employee stops working for you before the baby is born, they are not entitled to OSPP.
- OSPP stops after one or two weeks - as chosen by your employee.
- OSPP cannot be paid for any days later than the 56th day after the baby is born or, if the baby is born early, later than the 56th day after the Sunday of the week the baby was due.

### Adoption

If your employee stops working for you before the child is placed with the adopter they are not entitled to OSPP. OSPP stops after one or two weeks, as chosen by your employee, and cannot be paid more than 56 days after the date the child is placed.

There are circumstances where it might stop earlier. These are detailed on this page and page 35.

## Employee does some work for you

You cannot pay OSPP for any OSPP week in which your employee works for you. Even if your employee works for you for only half a day they will still lose a whole week's OSPP.

## Employee works for another employer

If your employee works for another employer during the OSPP period after the baby is born or the child is placed, you need to check whether they were employed by that employer during the Qualifying or Matching Week. Tables showing these dates are on pages 55 to 57.

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

If your employee is working for someone who employed them in the Qualifying or Matching Week, you should continue to pay them OSPP as normal.

If your employee is working for someone who did not employ them in the Qualifying or Matching Week, you must stop paying OSPP from the start of the week they work for that employer. Your liability to pay OSPP ends completely on the last day of the week OSPP was paid before they started work. You must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC3 *Becoming a parent* or SC4 *Becoming an adoptive parent*, and send the original back to them.

## Compromise agreements

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

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

Any compromise agreement that pays them something other than their actual OSPP will not satisfy their legal entitlement.

A compromise agreement may use terms such as:

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

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

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

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

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

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

## OSPP and ordinary paternity leave when a child is adopted from abroad

When an employee or their partner adopts a child from abroad they can get OSPP if the adoption process includes an application to assess the adopter. 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 they have done this to the adopter. The relevant UK authority will be the Department for Education (in England), the Scottish Executive, the Welsh Assembly or the Northern Ireland Assembly.

The adopter will need to keep this document so you should take a copy for your records. They cannot receive OSPP or take ordinary paternity leave unless they have received Official Notification from the relevant UK authority.

### Qualifying conditions

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

- the adopter must have been sent Official Notification that the relevant UK authority has issued a Certificate of Eligibility to the overseas authority involved in the adoption confirming 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 the adopter was sent the Official Notification form, or by the time they want to start their OSPP period whichever is later
- 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 when the employee has completed 26 weeks service if that 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 SAP
- they have provided evidence that the child has entered the UK to live with them.

If your employee does not satisfy **all** of these qualifying conditions for OSPP you must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*.

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

An employee or their partner may have adopted a child abroad without the involvement of a UK authority. If this is the case, they will not be entitled to OSPP because they will not be able to produce an Official Notification as no Certificate of Eligibility will have been issued.

### Notice

#### Evidence of entitlement to OSPP when adopting from abroad – declaration of family commitment – form SC5

Your employee must give you notice and evidence of their entitlement to OSPP in writing at least 28 calendar days before they want to start being paid.

They can do this by completing form SC5 which contains a declaration giving the date the child is expected to enter the UK and also declares that they are not also claiming SAP. Form SC5 is available for this purpose or you may use your own form.

There are three stages when the employee should give you notice:

#### First stage

Your employee must tell you:

- the date on which the adopter received Official Notification from the relevant UK authority of their eligibility to adopt a child from overseas, and
- the date the child is expected to enter the UK if known.

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

If they **have not** already completed 26 weeks continuous employment with you when they receive Official Notification, they must tell you this within 28 days of the Sunday of the week when they complete 26 weeks continuous employment.

Where a new employee has already received Official Notification from the relevant UK authority before they have started work for you, they can qualify for OSPP from you provided they:

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

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 at least 28 days before they want their OSPP to start. At this stage they should also tell you whether they want to take one or two weeks OSPP and ordinary paternity leave. Your employee can also tell you when they want their OSPP and ordinary paternity leave to start at the first stage if they know then.

Employees can change their mind about the date on which they want their OSPP 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 United Kingdom within 28 days of the 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.

### **Ordinary Statutory Paternity Pay period and ordinary paternity leave**

#### **Start date**

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

- from the date the child enters the UK or on the following day if the employee is at work that day, or
- on a pre-determined date after the child has entered the UK.

The OSPP period and ordinary paternity leave cannot:

- start before the child enters the UK
- continue more than 56 days after the date the child enters the UK.

The OSPP period and ordinary paternity leave can start on any day of the week. The two periods should be aligned.

#### **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.

## Recovering OSPP

### How much do I get back?

The amount you get back normally depends on your total gross, employers' plus employees', Class 1 NICs in the last complete tax year before the Saturday of the employee's Qualifying or 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 OSPP, and
- an additional amount as compensation for the NICs you pay on the OSPP. The compensation rate for 2012-13 is 3%.

Add together all payments of OSPP made in the same tax months for which you are entitled to recover and calculate 100% plus 3% of that total figure.

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

Add together all payments of OSPP 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 OSPP paid. Any additional Occupational Paternity Pay or any other payments you make over and above the OSPP are not recoverable.

### Where does the money come from?

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

- PAYE tax
- NICs
- Student Loan deductions
- Construction Industry Scheme deductions.

You may also need to use this money to pay other statutory payments. Please make sure you have enough to cover all the payments you have to make, use the quick checksheet on page 19.

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

If you only had part year or no annual liability for Class 1 NICs for the previous tax year and this could be either more or less than £45,000, you will need to check whether it is £45,000, more than £45,000 or less than £45,000. Use the checksheets on pages 17 and 18.

#### Birth

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

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

#### Adoption

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 3 April 2011 and 31 March 2012 check your liability for 2010-11
- if the adoption agency told the adopter that they have been matched with a child between 1 April 2012 and 30 March 2013 check your liability for 2011-12.

### Recovery of OSPP paid in a previous tax year

If you need to recover OSPP 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 must do this within six years of the end of the tax year in which it was paid. Go to our website at [www.hmrc.gov.uk/paye/forms-publications.htm](http://www.hmrc.gov.uk/paye/forms-publications.htm)

Send the completed form SP32 to:

HM Revenue & Customs  
Multi Refunds  
Room BP1001  
Benton Park View  
NEWCASTLE UPON TYNE  
NE98 1ZZ.

### Recovery and NICs holiday

The amount of any OSPP recovery should be calculated by reference to the total gross NICs figure before you take off the amount of NICs holiday you are entitled to withhold. For more information go to [www.hmrc.gov.uk/paye/intro/nics-holiday/index.htm](http://www.hmrc.gov.uk/paye/intro/nics-holiday/index.htm)

## Recovering OSPP (birth and adoption)

### Checksheet – if you were not an employer for the whole of 2010–11 or 2011–12

1. Add together your total Class 1 NICs for the tax months in that year.	<input type="text" value="£"/>
2. Work out the number of tax months you were an employer in that year. Count part months as whole months and remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
3. Divide the figure in 1 by the number of months in 2.	<input type="text" value="£"/>
4. Multiply the figure in 3 by 12.	<input type="text" value="£"/>

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

- 100% of the OSPP, and
- 3% as compensation for the NICs you pay on the OSPP.

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

## Recovering OSPP (birth)

### Checksheet – if you were not an employer at all in the tax year ending before the employee's Qualifying Week

1. Find the date the baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Sunday in the Qualifying Week. (Use the tables on pages 55 and 56.)	<input type="text" value="/ /"/>
3. Identify the tax year in which the Sunday in the Qualifying Week falls.	<input type="text"/>
4. Identify the tax month before the Sunday in the Qualifying Week. Remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, <b>or the first tax month for which you were liable for Class 1 NICs</b> , and the tax month you identified at 4, inclusive.	<input type="text" value="£"/>
6. Work out the number of tax months between the start of the tax year you identified at 3, <b>or the first tax month for which you were liable for Class 1 NICs</b> , and the tax month you identified at 4, inclusive.	<input type="text"/>
7. Divide the figure in 5 by the number of months in 6.	<input type="text" 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 OSPP, and
- 3% as compensation for the NICs you pay on the OSPP.

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

## Recovering OSPP (adoption)

### 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. (Use the tables on page 57.)	<input type="text" value="/ /"/>
3. Identify the tax year in which the Sunday falls.	<input type="text"/>
4. Identify the tax month before this Sunday. Remember that tax months run from the 6th of one month to the 5th of the following month.	<input type="text"/>
5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, <b>or the first tax month for which you were liable for Class 1 NICs</b> , and the tax month you identified at 4, inclusive.	£ <input type="text"/>
6. Work out the number of tax months between the start of the tax year you identified at 3, <b>or the first tax month for which you were liable for Class 1 NICs</b> , and the tax month you identified at 4, inclusive.	<input type="text"/>
7. Divide the figure in 5 by the number of months in 6.	£ <input type="text"/>
8. Multiply the figure in 7 by 12.	£ <input type="text"/>

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

- 100% of the OSPP, and
- 3% as compensation for the NICs you pay on the OSPP.

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



## Get help with statutory payments funding

### Advance funding

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

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

If you obtain, either fraudulently or negligently, incorrect funding you could be liable to a penalty up to a maximum of £300 for OSPP or £3,000 for ASPP. We will charge a penalty for each employee for whom you incorrectly claimed advance funding. If the claim spans more than one tax year we will charge a penalty for each year for which you incorrectly claimed advance funding. A repeat offence will increase the amount of the penalty.

### No PAYE payment to make

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

There are several ways to advise HMRC that you do not have a payment to make:

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

If you believe no payments will be due for several months, please phone HMRC on **0845 366 7816** and tell them the months involved.

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

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

**If F is less than A write to your HMRC accounts office to ask for an advance.**  
If you need any help call 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](http://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 statutory payment is relevant to a previous tax year you cannot apply online. You must write to your accounts office. You should tell them the information set out in the quick checksheet above and ask for advance funding. You should record the payments of OSPP as normal. See the paragraph 'Recording payments of OSPP' on page 20.

## Keeping records

### What you must keep

You must keep:

- the declaration of family commitment (or a copy if you gave it back to your employee with form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*)
- a record of the payment dates, and the amounts paid
- the date the pay period began
- a record of any unpaid OSPP with reasons for non-payment.

Form OSPP2 *Ordinary Statutory Paternity Pay record sheet* to help you keep a record of your payments is available online, go to

[www.hmrc.gov.uk/paye/forms-publications.htm](http://www.hmrc.gov.uk/paye/forms-publications.htm)

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

### Recording payments of OSPP

You must record payments of OSPP to your employee in the same way as their wages. Record the payments on your employee's P11 or P12 *Deductions Working Sheet* or computerised equivalent. You will need to record the amount of OSPP you have paid and recovered when you complete your *Employers Annual Return* (P35 and P14s) at the end of the tax year. Helpbook E13(2012) *Day-to-day payroll* tells you how to complete your employee's P11.

For more information on keeping records read helpbook E10(2012) *Finishing the tax year up to 5 April 2012*, or helpbook E11(2012) *Starting the tax year from 6 April 2012*, go to:

- [www.hmrc.gov.uk/payrollsoftware](http://www.hmrc.gov.uk/payrollsoftware)
- [www.hmrc.gov.uk/paye/forms-publications.htm](http://www.hmrc.gov.uk/paye/forms-publications.htm)

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

You cannot make a recovery in one tax year that relates to OSPP payments **made** in a previous tax year. For more information about how you can record and recover payments made in a previous tax year, see page 16.

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

### Recording advance payments

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

Any advance 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 OSPP

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

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

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

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

See CWG2(2012) *Employer Further Guide to PAYE and NICs* for information on how to correct errors in recording NICs.

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

### 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 37.

# Checksheets to calculate Average Weekly Earnings (AWE) for the OSPP Scheme

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

If your employee earns:

- less than £102.00 gross a week for a baby due between 17 July 2011 and 14 July 2012, or
  - less than £107.00 gross a week for a baby due between 15 July 2012 and 13 July 2013
- they will not qualify for OSPP. Go to the 'Does your employee earn enough?' section below.

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

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

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

To work out AWE you must:

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

**To work out AWE for employees paid in multiples of a week, for example, weekly, fortnightly or other multiples of a week if you do not pay your employees in a regular pay pattern**

1. Find the date the baby is due.

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

(Use the tables on pages 55 and 56.)

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 before the date in 3

and come forward one day, for example, if the payday is 22 June, enter 23 June. **This is the first day of the relevant period.**

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

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

**(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)**

## Does your employee earn enough?

If the amount at 6:

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

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC3 *Becoming a parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'

## Quick method for calculating AWE (OSPP adoption)

If your employee earns:

- 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, or
- less than £107.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

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

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

Use the weekly checksheet below or the monthly checksheet on page 24.

## 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 at 1.  
(Use the tables on page 57.)

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

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

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

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

**(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)**

## Does your employee earn enough?

If the amount at 6:

- 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, or
- is at least £107.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC4 *Becoming an adoptive parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'

## Checksheet for monthly paid – how to work out AWE (OSPP birth)

To work out AWE you must:

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

To work out AWE for employees paid monthly	
1. Find the date the baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Saturday in the Qualifying Week. (Use the tables on pages 55 and 56.)	<input type="text" value="/ /"/>
3. Find the date of the last normal payday on or before that Saturday. <b>This is the last day of the relevant period.</b>	<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. <b>This is the first day of the relevant period.</b>	<input type="text" value="/ /"/>
5. Add together the earnings paid between the dates at 4 and 3 (inclusive).	£ <input type="text"/>
6. Work out how many whole months there are between the dates in 4 and 3 (inclusive). If there is not a whole number of months, see the paragraph 'Rounding to the nearest whole month when there is not a whole number of months in the relevant period' below.	<input type="text"/>
7. Divide the figure in 5 by the number of whole months in 6.	£ <input type="text"/>
8. Multiply the figure at 7 by 12.	£ <input type="text"/>
9. Divide the figure in 8 by 52.	£ <input type="text"/>
<b>(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)</b>	

### Does your employee earn enough?

If the amount at 9:

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

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31. If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC3 *Becoming a parent* and give the original back to them.

If your employee earns enough, go to page 12 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, 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 the following 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.

## Checksheet for monthly paid – how to work out AWE (OSPP adoption)

To work out AWE you must:

- convert monthly paid into an average weekly amount
- always use the relevant period – worked out using the checksheet below
- only include earnings paid in 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 at 1. (Use the tables on page 57.)	<input type="text" value="/ /"/>
3. Find the date of the last normal payday on or before that Saturday. <b>This is the last day of the relevant period.</b>	<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. <b>This is the first day of the relevant period.</b>	<input type="text" value="/ /"/>
5. Add together the earnings paid between the dates at 4 and 3 (inclusive).	£ <input type="text"/>
6. Work out how many whole months there are between the dates in 4 and 3 (inclusive). If there is not a whole number of months, see paragraph 'Rounding to the nearest whole month when there is not a whole number of months in the relevant period' below.	<input type="text"/>
7. Divide the figure in 5 by the number of whole months in 6.	£ <input type="text"/>
8. Multiply the figure at 7 by 12.	£ <input type="text"/>
9. Divide the figure in 8 by 52.	£ <input type="text"/>
<b>(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)</b>	

### Does your employee earn enough?

If the amount at 9:

- 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, or
- is at least £107.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31. If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC4 *Becoming an adoptive parent* and give the original back to them.

If your employee earns enough, go to page 12 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, 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.

## Employee not paid in a regular pay pattern (OSPP birth)

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

### Checksheet for employees not paid in a regular pay pattern (OSPP birth)

#### To work out AWE if you do not pay your employee in a regular pay pattern

1. Find the date the baby is due.

2. Find the date of the Saturday in the Qualifying Week.  
(Use the tables on pages 55 and 56.)

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

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

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

6. Work out the number of days between the dates in 4 and 3 (inclusive).

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

8. Multiply the figure in 7 by 7.

**(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)**

### Does your employee earn enough?

If the amount at 8:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
  - is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC3 *Becoming a parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'

## Employee not paid in a regular pay pattern (OSPP adoption)

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

### Checksheet for employees not paid in a regular pay pattern (OSPP adoption)

#### To work out AWE if you do not pay your employee in a regular pay pattern

1. Enter the Matching Date

2. Find the first Saturday on or after the date in 1.  
(Use the tables on page 57.)

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

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

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

6. Work out the number of days between the dates in 4 and 3 (inclusive).

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

8. Multiply the figure in 7 by 7.

**(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)**

### Does your employee earn enough?

If the amount at 8:

- 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, or
- is at least £107.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC4 *Becoming an adoptive parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'



## Directors

### **Companies incorporated on or after 1 October 2009**

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

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

Directors can decide what and when to pay remuneration.

There is no need for a resolution of the company's shareholders at its Annual General meeting (AGM).

In such cases payment of a director's fees will be regarded as earnings for the purpose of entitlement to OSPP 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 earnings. 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 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 21 to 24.

#### **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 pages 28 and 29, 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 21 to 24.

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 checksheets on pages 28 and 29.

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 (OSPP birth)

To work out AWE for directors paid only by a formal vote	
1. Find the date the baby is due.	<input type="text" value="/ /"/>
2. Find the date of the Saturday in the Qualifying Week. (Use the tables on pages 55 and 56.)	<input type="text" value="/ /"/>
3. Find the date of the last formal vote on or before that Saturday. <b>This is the last day of the relevant period.</b>	<input type="text" value="/ /"/>
4. Count back to the payday that is at least eight weeks from the date in 3 until the date of the previous formal vote and come forward one day, for example, if the payday is 22 June, enter 23 June. <b>This is the first day of the relevant period.</b>	<input type="text" value="/ /"/>
5. Add together money voted between the dates in 4 and 3 (inclusive). <b>(Do not include any money drawn in anticipation of the vote.)</b>	£ <input type="text"/>
6. Work out how many whole months there are between the dates at 4 and 3 (inclusive). If there aren't a whole number of months see the paragraph 'Rounding to the nearest whole month when there is not a whole number of months in the relevant period' on page 23.	<input type="text"/>
7. Divide the figure at 5 by the number of whole months in 6.	£ <input type="text"/>
8. Multiply the figure at 7 by 12.	£ <input type="text"/>
9. Divide the figure in 8 by 52.	£ <input type="text"/>
<b>(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)</b>	

### Does your director earn enough?

If the amount at 9:

- is at least £102.00 gross a week for babies due between 17 July 2011 and 14 July 2012, or
  - is at least £107.00 gross a week for babies due between 15 July 2012 and 13 July 2013
- then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC3 *Becoming a parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'

## Checksheet for directors paid only by a formal vote (OSPP adoption)

To work out AWE for directors paid only by a formal vote	
1. Enter the Matching Date.	<input type="text" value="/ /"/>
2. Find the first Saturday on or after the date in 1. (Use the tables on page 57.)	<input type="text" value="/ /"/>
3. Find the date of the last formal vote on or before that Saturday. <b>This is the last day of the relevant period.</b>	<input type="text" value="/ /"/>
4. Count back to the payday that is at least eight weeks from the date at 3 until the date of the previous formal vote and come forward one day, for example, if the payday is 22 June, enter 23 June. <b>This is the first day of the relevant period.</b>	<input type="text" value="/ /"/>
5. Add together money voted between the dates in 4 and 3 (inclusive). <b>(Do not include any money drawn in anticipation of the vote.)</b>	<input type="text" value="£"/>
6. Work out how many whole months there are between the dates at 4 and 3 (inclusive). If there aren't a whole number of months, see the paragraph 'Rounding to the nearest whole month when there is not a whole number of months in the relevant period' on page 24.	<input type="text"/>
7. Divide the figure at 5 by the number of whole months in 6.	<input type="text" value="£"/>
8. Multiply the figure at 7 by 12.	<input type="text" value="£"/>
9. Divide the figure in 8 by 52.	<input type="text" value="£"/>
<b>(Don't round up or down to whole pence; use the unrounded amount to decide if the employee's AWE are high enough.)</b>	

### Does your director earn enough?

If the amount at 9:

- 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, or
- is at least £107.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

then your employee earns enough to meet this qualifying condition.

If they don't earn at least the amounts shown above, refer to the guidance on pages 30 and 31.

If they still don't qualify for OSPP, you must:

- give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*
- take a copy of the declaration on form SC4 *Becoming an adoptive parent* and give the original back to them.

If your employee earns enough, go to page 12 for 'Has your employee given you sufficient notice?'

## Miscellaneous for the OSPP Scheme

### Calculations for AWE in certain circumstances

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

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

Follow Steps 1 to 5 of the weekly checksheet on page 21 or 22. At Step 6 divide the figure in Step 5 by the number of weeks' wages in the payment.

#### Mistimed payments

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

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

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

Follow Steps 1 to 5 of the weekly checksheet on page 21 or 22. 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 21 or 22. 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 monthly checksheet on page 23 or 24 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 the employee's earnings together to work out Class 1 NICs, you would do the same to work out the employee's AWE, and the employee can only get one lot of OSPP.

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 OSPP.

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

#### Overpayment/underpayment of earnings made during the relevant period

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 OSPP even if their AWE would otherwise have been below the Lower Earnings Limit (LEL), or they could be excluded where an underpayment of wages means their AWE falls below the LEL. Should this situation arise do not recalculate the AWE. Adjust any overpayment or underpayment of wages in the normal manner and note your wage records accordingly.

#### 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 sacrifice during the relevant period.

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

#### Contractual benefits

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

For more information on the treatment of childcare vouchers and other contractual benefits and expenses see [www.hmrc.gov.uk/payereporting-az.htm](http://www.hmrc.gov.uk/payereporting-az.htm)

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

If your employee's entitlement to OSPP 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 their AWE
- pay any extra OSPP due.

If your employee was not entitled to OSPP 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 to OSPP.

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

##### Birth

If your employee has AWE of less than:

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

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

### Adoption

If your employee has AWE of less than:

- £102.00 and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012, or
- £107.00 and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

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

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

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

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

If you had to recalculate your employee's earnings because they did not qualify and:

- some of their earnings were included in a PAYE Settlement Agreement, and
- they then get a pay rise which increases the amount of earnings already paid in the relevant period for working out their AWE

you must recalculate their AWE as shown in the following paragraph.

## Recalculating your employee's AWE

### Step 1

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

### Birth

If the new AWE amount is at least:

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

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

### Adoption

If the new AWE amount is at least:

- £102.00 and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012, or
- £107.00 and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

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

So:

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

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

If the new AWE is less than the LEL go to Step 2.

### Step 2

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

### Birth

If the new AWE amount is at least:

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

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

### Adoption

If the new AWE amount is at least:

- £102.00 and the adoption agency told the adopter that they had been matched with a child between 3 April 2011 and 31 March 2012, or
- £107.00 and the adoption agency told the adopter that they had been matched with a child between 1 April 2012 and 30 March 2013

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

So:

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

If the new AWE is less than the LEL shown above they still cannot get OSPP. You must give your employee form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC3 *Becoming a parent* or SC4 *Becoming an adoptive parent*, and give the original back to them.

You must do this:

- for OSPP (birth), within 28 days of the day your employee gave notice of absence
- for OSPP (adoption), within 28 days of the end of the seven-day period that starts on the date on which the adopter is notified of having been matched with the child.

## 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](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### 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 OSPP 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 your local HMRC office.

### Agency workers

See 'Length of employment' on page 8. If they were placed with clients by you in every week, they can get OSPP. If they were not placed with clients by you in every week, and particularly in the Matching Week (OSPP adoption) or Qualifying Week (OSPP birth) you need to check why not. They can still get OSPP if you did:

- not have work to offer them, or
- 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 OSPP 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 (OSPP adoption) or Qualifying Week (OSPP birth), then to get OSPP they must do some more work for a client through you before starting their paternity 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](http://www.acas.org.uk) or phone **08457 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### 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 (OSPP adoption) or Qualifying Week (OSPP birth), or
  - not required to work during those weeks
- they can be treated as having worked in the Matching Week (OSPP adoption) or Qualifying Week (OSPP birth). This applies even if they do not resume work before commencing paternity absence.

#### Leave

Casual employees are entitled to paternity leave if they satisfy all the qualifying conditions. If you are not sure whether a casual employee is entitled to leave, contact Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **0845 47 47 47** or in Northern Ireland contact the LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### Mariners

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

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

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

### NHS employees

Some NHS employees, whose contracts are split between Strategic Health Authorities and NHS Trusts as a result of NHS reorganisation, can choose to have all their earnings added together for working out AWE for OSPP purposes. For further information phone the Employer Helpline on **08457 143 143**.

However, if an employee changes from one Trust to another during the 26 weeks' employment qualifying rule, the employee may not satisfy the continuous employment rule for OSPP purposes, unless it is the same NHS Trust. For more advice email [doctorsanddentists@nhsemployers.org](mailto:doctorsanddentists@nhsemployers.org)

## Exceptions to the normal conditions for OSPP

### Stillbirth

Your employee is entitled to OSPP and ordinary paternity leave if the baby is stillborn. A stillbirth occurs if the baby is stillborn from the 24th week of pregnancy. The rules are the same as for a live birth.

### Premature or early birth

If the baby is born early there are special rules for when your employee needs to give you evidence and when you start to pay. All the other terms and conditions apply.

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

They must still tell you when they want to take their ordinary paternity leave and OSPP and whether they want to take one or two consecutive weeks.

They can choose to take their leave any time between the actual date of birth and the end of an eight-week period running from the Sunday of the week the baby was originally due. See the tables on pages 55 and 56 to find the Sunday of the week the baby was originally due.

### Evidence

If the baby was born before the employee was due to give you their completed form SC3 *Becoming a parent*, they should complete this form as soon as possible, confirming the date the baby was due and the date of the actual birth. The form also includes a section for declaration of family commitment. This evidence should be accepted as being on time for the earlier start of OSPP. If they had already chosen the start date for their OSPP but now need to change this to an earlier date, you should accept that they have given notice on time.

Your employee should give you completed form SC3 *Becoming a parent* as soon as they can and you should accept it as being on time for the earlier start of OSPP.

You do not need a birth certificate or evidence of pregnancy.

### Start of leave and payment

The OSPP period always starts the day after the last day your employee worked before starting their paternity leave. Your employee must tell you when they want to stop work, see above.

All the other rules on payment apply.

If your employee does not meet any of these terms and conditions they are not entitled to OSPP and you must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*.

### The child dies

If the child dies during the OSPP period, payment should continue as normal.

### The child ceases to live with the adopter

If the child ceases to live with the adopter during the OSPP period, payment should continue as normal.

### The child is placed after the expected date or is not placed after all

Your employee cannot be paid until 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.

### OSPP and ordinary paternity leave when 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. This can happen where two or more siblings are adopted from the same family. There is no entitlement to two separate periods of OSPP and ordinary paternity leave if more than one child is placed under the same arrangement.

The employee will only be entitled to a further period of OSPP and ordinary paternity 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.

If there are separate arrangements, entitlement of up to a further two weeks of OSPP and paternity leave will commence from the date the second child is placed with the adopter.

### Employee dies

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

### Employee leaves job before ordinary paternity leave is taken

Your employee cannot get ordinary paternity leave if they have left their job but may still qualify for OSPP if they left after the date that the baby was born. If your employee stops work before the date of birth they are not entitled to OSPP.

If your employee stops work after the date of birth, it does not matter why they left or that they are not coming back. They are entitled to OSPP as long as they do not start work for a new employer during the OSPP period.

If your employee can get OSPP they should still give you 28 days notice of when they want to start to be paid, if they can.

### Start of payment

If the employment ends after the baby has been born but before the planned start of the OSPP period, you may treat the OSPP period as beginning on the day after the last day of employment. Your employee must tell you whether they want one or two weeks pay.

However, your employee may choose when to begin their OSPP period between the actual date of birth and the end of an eight-week period running from the day after the baby is born or the day after the Sunday of the week the baby was originally due. See the tables on pages 55 and 56 for the Sunday of the week the baby was originally due.

If they leave to start work for another employer, they are not entitled to OSPP during the OSPP period.

All the other rules on payment apply.

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

Your employee cannot get ordinary paternity leave if they have left their job before the child is placed.

To qualify for pay your employee must remain employed by you until the child is placed to get OSPP. If your employee can get OSPP they should still give you 28 days notice of when they want you to start paying them.

### Start of payment

If the employment ends after the child is placed but before the planned start of the OSPP period, you may treat the OSPP period as beginning on the day after the last day of employment.

However, your employee may choose when to begin their OSPP period between the date the child is placed and the end of an eight-week period running from that date.

### Reinstatement after dismissal

If your employee did not work for you during the period you worked out using the tables on pages 55 to 57:

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

they are entitled to OSPP and ordinary paternity leave, as if they had not been dismissed.

All the other rules for OSPP apply.

### Reinstatement following service in the Armed Forces

If your employee did not work for you during the period you worked out using the tables on pages 55 to 57, 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 OSPP and ordinary paternity leave.

The length of time your employee must have worked to get OSPP and ordinary paternity leave is split into two.

### Step 1

They must have been continuously employed by you for 26 weeks up to and including the Qualifying or Matching Week. Do not count the period they served in the Armed Forces as part of the 26 weeks.

### Step 2

They must continue to work for you right up until the baby is born or until the child is placed.

A week, in this instance, means Sunday to Saturday. Count part weeks as full weeks.

All the other rules for OSPP apply.

### Break in employment

For OSPP the employee must have been continuously employed by you for at least 26 weeks up to and including the Qualifying or Matching Week and they must continue to work for you right up until the baby is born or until the child is placed. To work out the latest start date for employment with you read page 8.

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 OSPP.
- Sickness or injury - the employee can get OSPP if the total period of incapacity is 26 weeks or less.
- Maternity leave - if she works for you before and after the break she can get OSPP, or if 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, she can get OSPP.
- Adoption leave - they were on adoption leave and they worked for you before and after the break, they can get OSPP.
- Paternity and parental leave - if the employee took paternity leave or parental leave and they worked for you before and after the break they can get OSPP.

### Trade disputes or industrial action

Your employee must have been continuously employed by you for at least 26 weeks into their Qualifying Week or Matching Week. You should not include weeks or part weeks where the employee is absent due to a trade dispute or industrial action as part of the 26 weeks, however, such weeks or part weeks do not break the continuity of employment.

All the other rules for OSPP apply.



## Employee is taken into legal custody

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

You must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC3 *Becoming a parent* or SC4 *Becoming an adoptive parent*, 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 is sick

If your employee tells you that they are sick during the OSPP period you must check whether they are entitled to SSP or not, see the Employer Helpbook E14(2012) *Employer Helpbook for Statutory Sick Pay*.

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

You must give them form OSPP1 *Non-payment of Ordinary Statutory Paternity Pay (OSPP)*, take a copy of the declaration on form SC3 *Becoming a parent* or SC4 *Becoming an adoptive parent*, and give the original back to them.

Bear in mind that:

- OSPP 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.

## Employee has more than one employer

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

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

If your employee has more than one job with you, you should have worked out whether they can get more than one payment of OSPP from you, when you were looking at whether their earnings were high enough in each employment, see page 9.

If they can only get one payment of OSPP from you they should take the same time off from each job otherwise they will lose some of their OSPP because they are working for you.

If they are entitled to more than one payment of OSPP from you they can choose to take different time off from each job without losing their entitlement to OSPP.

## Non-cash payments

You may normally pay some of your employee's earnings as a non-cash payment, for example providing board and lodging or giving them goods or services.

The value of the benefit provided during the OSPP period may not be deducted from the OSPP. You must pay any OSPP in full.

## Lump sums

If you do decide to pay the OSPP as a lump sum, you and your employee could pay more NICs than if you paid it on their normal payday. For more information on working out NICs see Employer Helpbook E13(2012) *Day-to-day payroll* and CWG2(2012) *Employer Further Guide to PAYE and NICs*.

## Offsetting OSPP against employee's pay

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

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

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

Whatever you pay your employee, you must still work out how much OSPP your employee was entitled to and keep the relevant records, see page 20.

## Paying through an agent

You can arrange for the OSPP to be paid through an insurance company, friendly society, payroll service or other third party. However, bear in mind that you, as the employer, are responsible for making sure that it is paid according to the rules.

## You take over a business

If you take over a business or part of a business and the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 2006 are often referred to as the TUPE Regulations.

The regulations apply when you take over an economic entity (a business, part of a business or a service provision) and take over the contracts of employment of the employees being transferred with the business.

The 'employee liability information' which the transferor employer must provide will give the identities of those employees being transferred with the business.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 2006 applies, go to:

- Acas at [www.acas.org.uk](http://www.acas.org.uk) or phone **08457 47 47 47**
- in Northern Ireland contact LRA at [www.lra.org.uk](http://www.lra.org.uk) or phone **028 9032 1442**.

### **If the regulations do not 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, your** employee can get OSPP and ordinary paternity leave as long as they work for you and the previous employer during the period you worked out using the tables on pages 55 to 57.

### **If continuity of employment is broken and:**

- you take on the business after the birth of the baby, or after the child is placed, the previous employer must pay OSPP to your employee
- you take on the business before the birth of the baby, or after the child is placed, your employee cannot get OSPP or paternity leave.

All the other rules for OSPP apply.

The tables for working out the periods to use are on pages 55 to 57.

## You cease to trade

If you cease to trade you remain liable to pay any outstanding OSPP until your employee has received their

full entitlement or their entitlement ends for one of the reasons outlined elsewhere in the helpbook.

## You become insolvent

If you become insolvent during the OSPP period HMRC will pay your employee's OSPP 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, the liquidator, administrator or other similar officer can let us know which of your employees are affected so we can pay them as soon as possible.

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

### Formal decisions about OSPP entitlement

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

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

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

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

If either of you appeals, HMRC will notify the other party. If you appeal, the officer making the decision will try to discuss the case with you so that the appeal can be decided by agreement between you, the officer and your employee.

Any agreement reached about the payment or otherwise of OSPP 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 in 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.

### OSPP not paid after a formal decision

If an employer fails to pay OSPP within the legal time limits following a decision by:

- HMRC that OSPP is due and the employer makes no appeal, or
  - the independent Tribunal that OSPP is due at an appeal hearing
- the employer may incur a penalty.

### OSPP penalties

Legislation provides that employers failing or refusing to operate the OSPP Scheme correctly can incur penalties. Like those in place for PAYE and NICs, these penalties are civil (not criminal).

The penalties cover the following offences.

- For any failure by you to give your employee the required information the penalty is up to a maximum of £300 and £60 for each day the failure continues.
- The refusal, repeated refusal or failure by you to pay OSPP to your employee 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 £300.
- If you fraudulently or negligently produce incorrect records the penalty is up to a maximum of £300.
- The provision of incorrect information either fraudulently or negligently to your employee could make you liable to a penalty up to a maximum of £300.
- The payment of an incorrect amount of OSPP due to either fraud or negligence could make you liable to a penalty up to £300.
- Obtaining either fraudulently or negligently incorrect funding could make you liable to a penalty up to a maximum of £300.
- 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 £300.

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.

# Overview of the ASPP Scheme

## Quick guide

This is a high level overview of the ASPP process. A list of frequently asked questions is also provided (see page 42).

### Introduction

ASPP was introduced for qualifying employees for babies due to be born on or after 3 April 2011 and for children matched for adoption on or after 3 April 2011 when:

- their spouse or partner has had a baby, or
- they and their spouse or they and their partner are jointly adopting a child.

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

ASPP is given to eligible fathers, partners, civil partners of mothers and adopters where there is entitlement to Statutory Maternity Pay (SMP), Maternity Allowance (MA) or Statutory Adoption Pay (SAP) and that payment has been brought to an end by the mother or adopter returning to work. The employee must be taking time off work to care for their 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.

### Adopter

For ASPP purposes, in UK adoption cases, an adopter means a person who has been matched with the child for adoption and who has elected to take adoption leave in order to care for the child.

### Paying ASPP

ASPP is paid to an employee by their employer in the same way as wages. ASPP can be paid in weeks and/or part weeks and is paid at the lower weekly rate of:

- £135.45, or
- 90% of AWE

for pay weeks commencing on or after Sunday 1 April 2012. ASPP will cease when the SMP, MA or SAP period ends.

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

For examples look on Basic PAYE Tools.

### ASPP and additional paternity leave start and end dates

Your employee has the right to choose when they want to take pay and leave within a set period.

#### Birth

- The earliest start date is 20 weeks after the child's birth.
- ASPP must end no later than the date the SMP or MA period ends.
- There must be at least two weeks SMP or MA remaining.
- Additional paternity leave (APL) cannot exceed 26 weeks, except in exceptional circumstances, and must end no later than the child's first birthday.
- Your employee may take unpaid APL after the SMP or MA period ends.

#### UK adoption

- The earliest start date is 20 weeks after the child was placed with the adopter.
- There must be at least two weeks SAP remaining.
- ASPP must end no later than the end of the SAP period.
- APL cannot exceed 26 weeks, except in exceptional circumstances, and must end no later than 12 months after the date the child was placed with the adopter.
- Your employee may take unpaid APL after the SAP period ends.

#### Adoption from abroad

- The earliest start date is 20 weeks after the child entered the UK.
- There must be at least two weeks SAP remaining.
- ASPP must end no later than the end of the SAP period.
- APL cannot exceed 26 weeks, except in exceptional circumstances, and must end no later than 12 months after the child entered the UK.
- Your employee may take unpaid APL after the SAP period ends.

More detailed information on paying ASPP can be found on page 48.

### Qualifying rules

The employee must:

- satisfy the conditions for entitlement to ASPP, see page 43
- give you the right evidence at least eight weeks before the start of the ASPP period, see page 46
- have been employed by you continuously for
  - at least 26 weeks into the Qualifying Week and continue to work for you until the end of the week before the ASPP period begins, or
  - at least 26 weeks into the Matching Week and continue to work for you until the end of the week before the ASPP period begins, see page 47
- have average weekly earnings which are not less than the Lower Earnings Limit (LEL), see page 9.

## Forms you may need to use

HMRC forms are available online, go to [www.hmrc.gov.uk/payee/forms-publications.htm](http://www.hmrc.gov.uk/payee/forms-publications.htm)

You can use your own version of any of the forms.

There is no formal approval process for your own forms but you must include all of the same information as you do on the approved HMRC forms.

### ***SC7 Additional Statutory Paternity Pay/ additional paternity leave – becoming a parent***

You may use this form to tell your employee about the terms and conditions relating to ASPP. This includes a statement for your employee to return to you to tell you about dates and leave and declarations from both your employee and the mother of the child.

### ***SC8 Additional Statutory Paternity Pay/ additional paternity leave – becoming an adoptive parent***

You may use this form to tell your employee about the terms and conditions relating to ASPP. This includes a statement for your employee to return to you to tell you about dates and leave and declarations from both your employee and the joint adopter of the child.

### ***SC9 Additional Statutory Paternity Pay/ additional paternity leave – adopting a child from abroad***

You may use this form to tell your employee about the terms and conditions relating to ASPP. This includes a statement for your employee to return to you to tell you about dates and leave and declarations from both your employee and the adopter of the child.

### ***SC10 Additional Statutory Paternity Pay/additional paternity leave – death of the mother/adopter***

You may use this form to tell your employee about the terms and conditions relating to ASPP. This includes a statement for your employee to return to you to tell you about dates and leave and a declaration from your employee.

### ***ASPP1 Non-payment of Additional Statutory Paternity Pay (ASPP)***

You may use this form to tell your employee why they are not entitled to ASPP. You must give this form to your employee within 28 days of the day your employee gave notice of absence.

### ***ASPP2 Additional Statutory Paternity Pay (ASPP) record sheet***

Use this form to keep a record of statutory paternity payments and any changes in dates.

### ***ASPP3 Employer Checklist for Additional Statutory Paternity Pay/ additional paternity leave***

Use this checklist to help you with your employee's application for Additional Statutory Paternity Pay (ASPP) and additional statutory paternity leave.

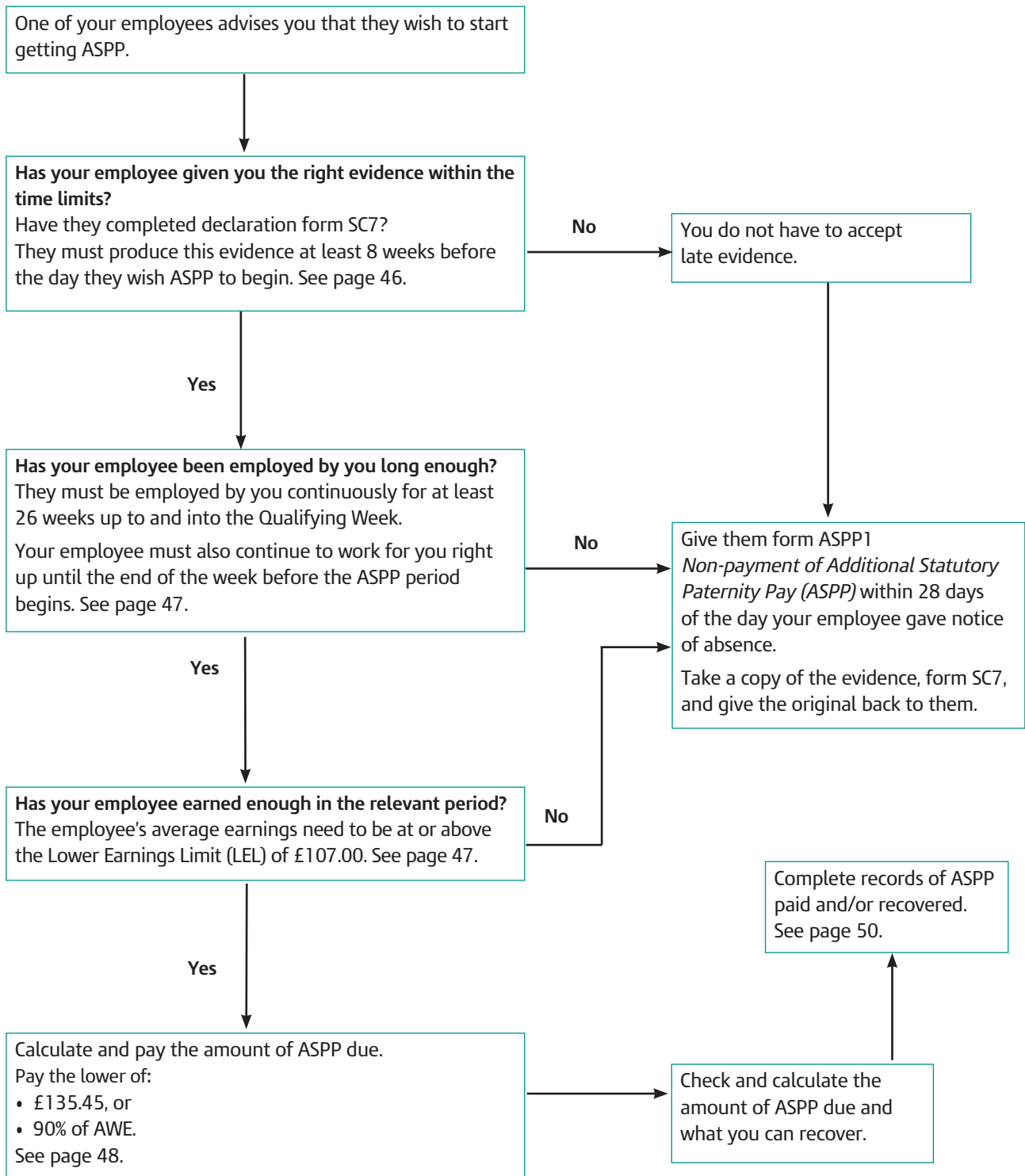
## Terms used in this helpbook

These are the same as for OSPP, see page 4.

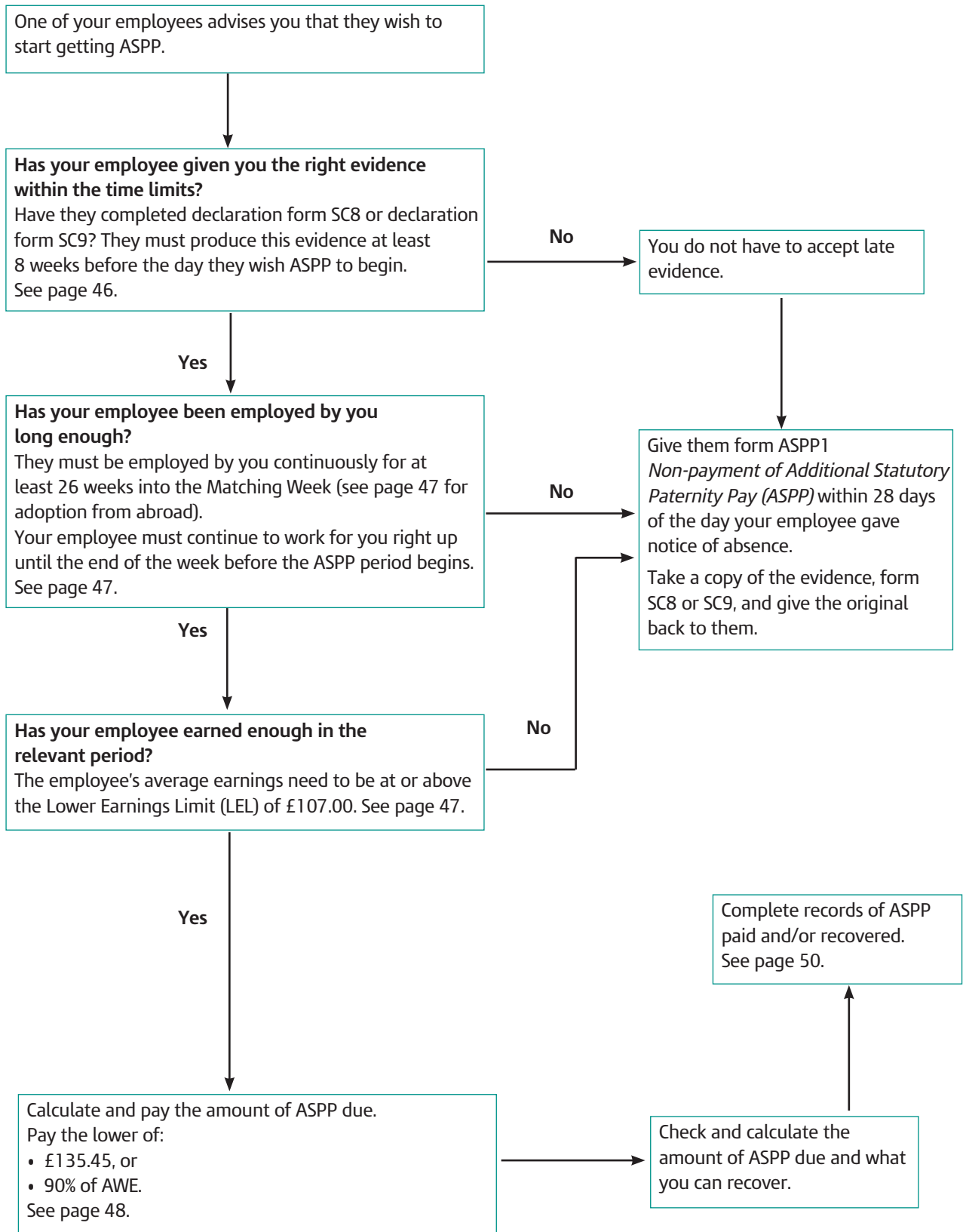
## General information

This is the same as for OSPP, see page 6.

# Flowchart - Operating the ASPP Scheme for birth



# Flowchart - Operating the ASPP Scheme for adoption



## Frequently asked questions

### How do I calculate ASPP?

If your employee meets all the qualifying conditions, you should pay them the lower of either the standard rate which is currently £135.45 or 90% of the employee's AWE. The ASPP calculator will help you to work out if you have to pay ASPP to your employee and how much you should pay. It will also help you to work out how much ASPP you can recover. The ASPP calculator is available on our website, go to [www.hmrc.gov.uk/payee/employees/statutory-pay/aspp-calc.htm](http://www.hmrc.gov.uk/payee/employees/statutory-pay/aspp-calc.htm)

It is also available on Basic PAYE Tools, go to [www.hmrc.gov.uk/payee/basic-payee-tools.htm](http://www.hmrc.gov.uk/payee/basic-payee-tools.htm)

### What information do I need from my employee?

Your employee should give you form SC7, SC8, SC9 or SC10, or equivalent which should be signed and returned to you. The application includes a statement for your employee to tell you about dates and leave and declarations from both your employee and the mother/adopter of the child.

### What records should I keep?

You must keep the form SC7, SC8, SC9 or SC10, records of the payment dates and amount paid, the dates the pay period began and ended, a record of any unpaid ASPP and the reasons for non-payment. See 'Keeping records' on page 50.

### What do I do if my employee is not entitled to ASPP?

If your employee does not meet all the qualifying conditions you do not have to pay ASPP. Instead you should return the SC7, SC8, SC9, or SC10 to your employee after taking a photocopy for your records. Then complete form ASPP1, which explains why you cannot pay them ASPP, and give it to your employee within 28 days of the day your employee gave notice of absence.

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

You can ask your HMRC accounts office to pay you an advance of the amount you need to pay your employee's ASPP. See 'Get help with statutory payments funding' on page 19.

### Can I recover the ASPP paid to my employees?

Yes, but the amount you get back depends on your total gross NICs liability you pay us. See 'Recovering ASPP' on page 16.

### What happens if the mother or father becomes sick before the ASPP pay period?

If the father becomes sick before the ASPP pay period begins, continue to pay SSP until the sickness ends. You can't pay them ASPP when they are entitled to be paid SSP.

If the mother becomes sick before the ASPP pay period begins, you can't pay ASPP until the sickness ends and the mother returns to work.

### What happens if the mother or father becomes sick during the ASPP pay period?

If the father becomes sick during the ASPP pay period you must check to see if they are entitled to SSP. If they are entitled to SSP, you must pay them SSP instead of ASPP for the period of sickness.

If the mother becomes sick during the ASPP pay period continue to pay ASPP.



# Operating the ASPP Scheme

## Conditions for entitlement to ASPP

### ASPP for birth

Your employee and the child's mother must both satisfy certain conditions for entitlement to ASPP.

#### Employee

Your employee will satisfy the conditions for ASPP if:

- they are the child's father, or if not the child's father, they are the spouse, civil partner or partner of the mother
- they have, or expect to have, the main responsibility (apart from the mother) for the upbringing of the child
- they have been employed by you long enough, see page 47
- they have normal weekly earnings above the LEL in the relevant period, see page 47
- they intend to care for the child during the ASPP period
- the mother satisfies her conditions, see below
- the mother has completed and signed her declaration, see below
- they have given a completed declaration to you, see page 44.

#### Child's mother

The child's mother must have:

- satisfied the conditions for entitlement to Statutory Maternity Pay (SMP) or Maternity Allowance (MA)
- taken action to return to work
- taken at least two weeks off work after the birth
- at least two weeks of her SMP or MA period remaining
- signed the declaration form SC7 to confirm she intends to return to work and will stop receiving SMP or MA.

### ASPP for UK adoption

Your employee and the child's adopter must both satisfy certain conditions for entitlement to ASPP.

#### Employee

Your employee will satisfy the conditions for ASPP if:

- they have been matched for adoption with the child
- they are the spouse, civil partner or partner of the adopter
- they have been employed by you long enough, see page 47
- they have normal weekly earnings above the LEL in the relevant period, see page 47
- they intend to care for the child during the ASPP period
- the adopter satisfies their conditions, see below
- the adopter has completed and signed their declaration, see below
- they have given a completed declaration to you, see page 44.

#### Child's adopter

The child's adopter must have:

- satisfied the conditions for entitlement to SAP
- taken action to return to work
- taken at least two weeks off work after the child was placed with them
- at least two weeks of their SAP period remaining
- signed the declaration form SC8 to confirm they intend to return to work and will stop receiving SAP.

### ASPP for adoption from abroad

Your employee and the child's adopter must both satisfy certain conditions for entitlement to ASPP.

#### Employee

The conditions are the same as for UK adoption except that your employee does not have to be adopting the child. They must also satisfy two further conditions:

- they are the spouse, civil partner or partner of the adopter
- they have, or expect to have, the main responsibility (apart from the adopter) for the upbringing of the child.

#### Child's adopter

The conditions are the same as for UK adoption except that instead of having taken at least two weeks off work after the child was placed with them they should have taken at least 2 weeks off work after the child entered the UK.

## Evidence for ASPP (birth)

Your employee must apply for ASPP at least eight weeks before ASPP is due to start, see page 46. The application must be in writing and made to you as the employer who is liable to pay the ASPP. They can do this by submitting form SC7 or equivalent which provides basic information, the employee's declaration and the mother's declaration.

### Basic information

Your employee should provide you with the following information in writing:

- their name
- the child's expected week of birth
- the child's actual date of birth
- the date they expect ASPP to begin
- the date they expect ASPP to end.

### Employee's declaration

Your employee must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they are the child's father, or if not the child's father, they are the spouse, civil partner or partner of the mother
- they have, or expect to have, the main responsibility (apart from the mother) for the upbringing of the child.

### Mother's declaration

You must also be provided with a written declaration signed by the mother:

- that she has notified her employer that she is returning to work
- that she is entitled to SMP or MA
- stating her name, address and National Insurance number
- stating the start date of her maternity allowance or maternity pay period
- stating the date on which she intends to return to work
- confirming that her spouse, civil partner or partner is the sole applicant for ASPP in respect of this particular child
- that she consents to you processing the information given in the declaration.

### Additional information

You may also ask your employee to provide additional information as follows:

- a copy of the child's birth certificate, and
- the name and business address of the mother's employer or, if self-employed her business address.

See page 46.

Your employee must also inform you as soon as possible when:

- they no longer satisfy the conditions
- they work for another employer who is not liable to pay them ASPP.

## Evidence for ASPP (UK adoption)

Your employee must apply for ASPP at least eight weeks before ASPP is due to start, see page 46. The application must be in writing and made to you as the employer who is liable to pay the ASPP. They can do this by submitting form SC8 or equivalent which provides basic information, the employee's declaration and the adopter's declaration.

### Basic information

Your employee should provide you with the following information in writing:

- their name
- the date they were notified that they had been matched with the child
- the date the child was placed for adoption
- the date they expect ASPP to begin
- the date they expect ASPP to end.

### Employee's declaration

The employee applying for ASPP must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they have been matched for adoption with the child
- they are the spouse, civil partner or partner of the adopter

### Adopter's declaration

You must also be provided with a written declaration signed by the adopter:

- that they have notified their employer that they are returning to work
- that they are entitled to SAP
- stating their name, address and National Insurance number
- stating the start date of their SAP period
- stating the date on which they intend to return to work
- confirming that their spouse, civil partner or partner is the sole applicant for ASPP in respect of this particular child
- that they consent to you processing the information given in the declaration.

### Additional information

You may also ask your employee to provide additional information in the form of documents issued by the adoption agency showing:

- the name and address of the agency
- the date they were notified that they had been matched with the child
- the date the agency expects to place the child with the adopter and the employee
- the name and business address of the adopter's employer, or if self-employed, their business address.

See page 46.

Your employee must also inform you as soon as possible if:

- they no longer satisfy the conditions
- they work for another employer who is not liable to pay them ASPP.

## Evidence for ASPP (adoption from abroad)

Your employee must apply for ASPP at least eight weeks before ASPP is due to start, see page 46. The application must be in writing and made to you as the employer who is liable to pay the ASPP. They can do this by submitting form SC9 or equivalent which provides basic information, the employee's declaration and the adopter's declaration.

### Basic information

Your employee should provide you with the following information in writing:

- their name
- the date the Official Notification was sent to the adopter
- the date the child entered the UK
- the date they expect ASPP to begin
- the date they expect ASPP to end.

### Employee's declaration

The employee applying for ASPP must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they are the spouse, civil partner or partner of the adopter
- they have, or expect to have, the main responsibility (apart from the adopter) for the upbringing of the child.

### Adopter's declaration

This is the same as for UK adoption, see page 44.

### Additional information

You may also ask your employee to provide:

- a copy of the Official Notification which was sent to the adopter
- evidence of the date when the child entered the UK, see page 15
- the name and business address of the adopter's employer, or if self-employed, their business address.

See page 46.

Your employee must also inform you as soon as possible if:

- they no longer satisfy the conditions
- they work for another employer who is not liable to pay them ASPP.

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

### Application for ASPP

Your employee should give you form SC7, SC8, SC9 or equivalent. This also tells your employee about the terms and conditions relating to ASPP. The application also includes a statement for your employee to tell you about dates and leave and declarations from both your employee and the mother/adopter. You must not pay ASPP without this application.

You may also ask your employee to provide additional information, see pages 44 and 45. If you ask for this information, your employee must provide it within 28 days of your request.

### Time limits

- The employee must apply for ASPP in writing at least eight weeks before ASPP is due to start. You can delay the start of leave and pay until you have received acceptable notice.
- You must confirm the start and end dates of the employee's ASPP period in writing. This must be done within 28 days of receiving the application or the additional information if you have requested it.

### Choosing dates

Your employee has the right to choose when they want to take pay and leave within a set period.

For ASPP and additional paternity leave start and end dates, see page 38.

More detailed information on paying ASPP can be found on page 48.

### Change of mind

Before the date their ASPP begins, your employee may:

- withdraw their application for ASPP
- change the date they wish their ASPP to start
- change the date they wish their ASPP to end.

Your employee should give you at least six weeks written notice before the earlier of:

- the original start date or new start date
- the original end date or new end date.

If it is not reasonably practicable to give six weeks notice, your employee must give you written notice as soon as possible. You can accept shorter notice if you wish, but you do not have to.

Once your employee has started their additional paternity leave, they may wish to return to work earlier than they had originally planned. If so, they must give written notice at least six weeks before the new date.

The new date cannot be less than eight weeks after the SC7, SC8 or SC9 was provided.

### Employee not entitled to ASPP

If your employee is not entitled to ASPP you should return the SC7, SC8 or SC9 to your employee after taking a photocopy for your records. Then complete form ASPP1, which explains why you cannot pay them ASPP, and give it to your employee within 28 days of the day your employee gave notice of absence.

## Has your employee been employed by you long enough?

Your employee must be continuously employed from the latest start date for employment with you and continue to work for you until the week before the ASPP period begins. A week, in this instance, means Sunday to Saturday. Count part weeks as full weeks. Tables for the latest start date for employment with you are on pages 55 to 57.

### Continuous employment (birth)

Your employee must have been continuously employed by you for at least 26 weeks by the end of the 15th week before the week the baby is due (Qualifying Week). They must also continue to work for you until the week before the ASPP period begins.

If the baby is born before or during the Qualifying Week it will be accepted that the employee has been continuously employed for 26 weeks if they would have been but for the baby's premature birth. There is no change to the Qualifying Week in these circumstances.

### Continuous employment (UK adoption)

Your employee must have been continuously employed by you for at least 26 weeks by the end of the week in which they were notified that they had been matched with a child for adoption. They must also continue to work for you until the week before the ASPP period begins.

### Continuous employment (adoption from abroad)

Your employee's continuous employment must begin at least 26 weeks prior to the date the child enters the UK. They must also continue to work for you until the week before the ASPP period begins.

### Employee works abroad

This is the same as for OSPP, see page 8. The employee must also continue to work for you until the week before the ASPP period begins.

## Has your employee earned enough in the relevant period?

### What counts as earnings?

This is the same as for OSPP, see page 9.

### How to work out the relevant period for birth

This is the same as for OSPP, see page 10.

### How to work out the relevant period for UK adoption

This is the same as for OSPP, see page 11.

### How to work out the relevant period for adoption from abroad

This is the same as for OSPP for UK adoption except that Matching Week is replaced by either:

- the week in which the 26 weeks continuous employment condition is satisfied, or
- the week in which notification is sent to the adopter whichever is the later.

## Paying ASPP

### Start of payment

The earliest start date is 20 weeks after the baby's birth, 20 weeks after the child was placed with the adopter or 20 weeks after the date the child entered the UK. The mother or adopter must have returned to work and there must be at least two weeks of SMP, MA or SAP remaining (the SMP, MA or SAP pay period lasts for 39 weeks).

The ASPP period starts the day after the last day your employee worked before starting their additional paternity leave. Your employee will have told you when they planned to stop work, see 'Has your employee given you the right evidence within the time limits?' on page 46.

ASPP is paid in weeks and/or part weeks. ASPP can be paid for periods of less than one week, unlike OSPP, SMP and SAP which have to be paid in complete weeks. Calculate ASPP for periods of less than one week by dividing the weekly rate by seven.

ASPP is paid at the lower weekly rate of:

- £135.45, or
- 90% of AWE

for pay weeks starting on or after Sunday 1 April 2012.

ASPP should be paid in the same way as you would pay earnings and for the same period. All the usual deductions apply, including PAYE tax and NICs, 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).

### When does ASPP stop?

The latest date for stopping ASPP is when the mother or adopter's SMP, MA or SAP period ends. Also, if in any week, your employee:

- does not intend to care for the child at the start of the week, or
- does any work for you apart from the KIT days allowed, see page 49, the ASPP period will end at the end of the previous week.

Additional paternity leave ends no later than the child's first birthday, 12 months after the date the child was placed with the adopter or 12 months after the date the child entered the UK.

### Employee goes abroad

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

### Employee is not returning to work

If your employee is not returning to work you must still pay them ASPP. **You cannot ask them to repay it.**

### Employee does some work for you

See 'Keeping in touch (KIT) days' on page 49.

### Employee works for another employer

You should not pay ASPP for any week in which your employee:

- works for another employer during the ASPP period, and
- they were not employed by the other employer during the Qualifying Week, Matching Week or the week in which the adopter of a child from abroad received the Official Notification.

Your employee should notify you within seven days from the first day of doing any work for such an employer.

If your employee is working for someone who employed them in the Qualifying Week, Matching Week or the week in which the adopter of a child from abroad received the Official Notification, you should continue to pay them ASPP as normal.

### Compromise agreements

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

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

Any compromise agreement that pays them something other than their actual ASPP will not satisfy their legal entitlement.

A compromise agreement may use terms such as:

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

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

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

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

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

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

## Keeping in touch (KIT) days

An employee can work for you under their contract of service and during their ASPP period for up to 10 days without losing their ASPP for the week in which that work is done. These 10 days are called 'Keeping in touch (KIT) days' and enable your employee to undertake the odd day's training or do some work for you on occasion to keep in touch during their additional paternity leave without losing their ASPP or ending their additional paternity 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, but any work on any day (even as little as an hour) will count as a whole KIT day. The employer has no right to demand that such KIT work is undertaken and your employee has no obligation to undertake such work.

This provision is designed to help ease an employee's 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 and the arrangements including what work they 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 ASPP towards the contractual pay agreed with your employee. This is something which both parties need to agree before any work is done. You must pay the weekly ASPP rate the employee is entitled to and also comply with your statutory obligations, such as paying at least the National Minimum Wage (NMW).

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

Working more than 10 KIT days will bring the ASPP period to an end.

### Keeping in touch (KIT) days example

An employee works Monday to Friday, the ASPP period is 1 August 2012 to 27 November 2012 and the ASPP week is a Wednesday to Tuesday.

If they return to work for six days:

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

the ASPP weeks for this period are:

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

They then work for five days Monday to Friday, 22 October 2012 to 26 October 2012. The ASPP weeks for this period are:

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

ASPP is payable for all of the ASPP weeks except for the pay week 24 October 2012 to 30 October 2012 because in this week the employee has exceeded their 10 KIT days. The employee has used their total of 10 KIT days, so this means your employee is no longer entitled to ASPP or leave.

## Keeping records

### What you must keep

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

#### Records directly related to ASPP

You must keep:

- for birth, the evidence listed on page 44
- for UK adoption, the evidence listed on page 44
- for adoption from abroad, the evidence listed on page 45
- details of any changes to the original application, see page 46
- details of any weeks in the ASPP period when ASPP was not paid and the reasons why
- details of each week in the tax year for which ASPP was paid and the amount paid in each week.

#### During the year

You must record payments of ASPP on your employee's P11 *Deductions Working Sheet* or its equivalent.

ASPP2 *Additional Statutory Paternity Pay record sheet* is available for you to record the ASPP paid to your employee. This is available online, go to [www.hmrc.gov.uk/paye/forms-publications.htm](http://www.hmrc.gov.uk/paye/forms-publications.htm)

#### End of year returns

You will need to record the amount of ASPP you have paid and recovered when you complete your Employer Annual Return (P35 and P14) at the end of the tax year.

For more information on keeping records read:

- helpbook E11(2012) *Starting the tax year from 6 April 2012*
- helpbook E13(2012) *Day-to-day payroll*
- helpbook E10(2012) *Finishing the tax year up to 5 April 2012.*

Go to:

- [www.hmrc.gov.uk/payrollsoftware](http://www.hmrc.gov.uk/payrollsoftware)
- [www.hmrc.gov.uk/paye/forms-publications.htm](http://www.hmrc.gov.uk/paye/forms-publications.htm)

### 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 53.

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

This is the same as for OSPP, see page 20.

### Recording advance payments

This is the same as for OSPP, see page 20.

### Incorrect payment of ASPP

This is the same as for OSPP, see page 20.

## Recovering ASPP

This is the same as for OSPP, see page 16.

### Get help with statutory payments funding

This is the same as for OSPP, see page 19.



## Miscellaneous for the ASPP Scheme

### If the mother dies

Where the mother dies before the ASPP period has begun, ASPP and APL can start on the date of the mother's death. It cannot start before the date of death of the mother but it can start later.

ASPP must end no later than:

- the end of the mother's SMP or MA pay period
- earlier if the employee so notifies.

APL must end no later than the child's first birthday.

### Entitlement

Where the mother of the child dies before the end of their SMP or MA period but before the start of the ASPP period, all the qualifying conditions must be satisfied apart from the mother's signed declaration, see page 43.

If your employee is already receiving ASPP at the time of the mother's death this period can be extended until the end of the SMP or MA pay period. If your employee has returned to work following a period of ASPP, there is no entitlement to a further period of ASPP.

### Application

Your employee should inform you of the date on which they wish their ASPP period to begin (this can be a date in the past but not before the date of the mother's death). They should tell you this within eight weeks of the mother's death. If notice is not given within eight weeks of the mother's death, ASPP should not start until six weeks notice has been given. The initial notice does not have to be in writing, but the written declaration SC10 or equivalent must be given to you as soon as reasonably practical.

### Declaration

Your employee should complete the declaration SC10 or equivalent providing you with the following information:

- their name
- the child's expected week of birth
- the child's actual date of birth
- the date they expect ASPP to end
- the mother's name and address and National Insurance number
- the date the mother's SMP or MA period started or where the death occurred before the start date, when it was due to start
- date of the mother's death.

Your employee must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they are the child's father, or if not the child's father, they were the spouse, civil partner or partner of the mother
- they have, or expect to have, the main responsibility for the upbringing of the child.

You may also ask your employee to provide:

- a copy of the child's birth certificate, and
- the name and business address of the mother's employer or, if self-employed her business address.

If you ask for this information your employee must provide it within 28 days of you requesting it.

### Change of mind

Your employee after applying for ASPP can **within** eight weeks of the date of the mother's death:

- withdraw their application
- change the start date
- change the end date with immediate effect.

### Withdraw application

If your employee wishes to withdraw their application **more than** eight weeks after the date of the mother's death but before the ASPP pay period has begun, they may, if reasonably practicable, give you written notice at least six weeks before the date they expected their ASPP to start.

### Change start date

If your employee wishes to change the start date of their ASPP **more than** eight weeks after the date of the mother's death they may, if reasonably practicable, give you written notice at least six weeks before the earlier of:

- the original start date or
- the new date.

### Change end date

If your employee wishes to change the end date of their ASPP **more than** eight weeks after the date of the mother's death they may, if reasonably practicable, give you written notice at least six weeks before the earlier of:

- the original end date or
- the new date.

You must confirm (in writing) within 28 days the date on which your employee's ASPP pay period begins (or began) and ends.

## If the adopter dies (UK adoption)

Where the adopter dies before the ASPP period has begun, the payment of ASPP can start on the date of the adopter's death. It cannot start before the date of death of the adopter but it can start later.

ASPP must end no later than:

- the end of the adopter's SAP period, or
- earlier if the employee so notifies.

APL must end no later than one year after the child was placed for adoption.

### Entitlement

Where the adopter of the child dies before the end of their SAP period but before the ASPP period has begun, all the qualifying conditions must be satisfied apart from the adopter's signed declaration, see page 43.

If your employee is already receiving ASPP at the time of the adopter's death, this period can be extended until the end of the SAP period. If your employee has returned to work following a period of ASPP, there is no entitlement to a further period of ASPP.

### Application

This is the same as for death of the mother, see page 51.

### Declaration

Your employee should complete the declaration SC10 or equivalent providing you with the following information:

- their name
- the date they were notified that they had been jointly matched with the child
- the date the child was placed for adoption
- the date they expect ASPP to end
- the adopter's name and address and NINO
- the date the adopter's SAP period started or where the death occurred before the start date, when it was due to start
- date of the adopter's death.

Your employee must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they were jointly matched with the child with their spouse, civil partner or partner
- they have, or expect to have, the main responsibility for the upbringing of the child.

You may also ask your employee to provide documents issued by the adoption agency showing:

- the name and address of the agency
- the date they were notified that they had been matched with the child
- the date on which the agency expected to place the child with the adopter and the employee, and
- the name and business address of the adopter's employer or, if self-employed their business address.

If you ask for this information your employee must provide it within 28 days of you requesting it.

### Change of mind

This is the same as for death of the mother, see page 51.

## If the adopter dies (adoption from abroad)

Where the adopter dies before the ASPP period has begun, the payment of ASPP can start on the date of the adopter's death. It cannot start before the date of death of the adopter but it can start later.

ASPP must end no later than:

- the end of the adopter's SAP period, or
- earlier if the employee so notifies.

APL must end no later than one year after the child entered the UK.

### Entitlement

This is the same as for death of the adopter (UK adoption).

### Application

This is the same as for death of the mother, see page 51.

### Declaration

Your employee should complete the declaration SC10 or equivalent providing you with the following information:

- their name
- the date the Official Notification in respect of the child was sent to the adopter
- the date the child entered the UK
- the date they expected ASPP to end
- the adopter's name and address and NINO
- the date the adopter's SAP period started or where the death occurred before the start date, when it was due to start
- the date of the adopter's death.

Your employee must also sign a written declaration that:

- the information provided is correct
- they intend to care for the child during the ASPP period
- they were the spouse, civil partner or partner of the adopter.

You may also ask your employee to provide:

- a copy of the Official Notification in respect of the child
- evidence of the date the child entered the UK, see page 15
- the name and business address of the adopter's employer or, if self-employed their business address.

If you ask for this information your employee must provide it within 28 days of you requesting it.

### Change of mind

This is the same as for death of the mother, see page 51.

## Specific employments

This is the same as for OSPP, see page 32.

## Exceptions to the normal conditions for ASPP

You may also need to refer to the exceptions to the normal conditions for OSPP, see pages 33 to 36. Some of the exceptions for OSPP are not relevant to ASPP and some of the exceptions are the same for both OSPP and ASPP. Where they are different, they are listed below.

### The child dies

If the child dies during the ASPP period you should continue to pay ASPP for the pay week in which the child dies. You should stop payment from the start of the next pay week.

### The adopted child ceases to live with your employee

Where an adopted child is removed by the adoption agency, you should continue to pay ASPP for the pay week in which the child ceases to live with your employee. You should stop payment from the start of the next pay week.

### Reinstatement after dismissal

If your employee did not work for you during the period you worked out using the tables on pages 55 to 57:

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

they are entitled to ASPP and additional paternity leave as long as all the other conditions to entitlement are satisfied.

### Reinstatement following service in the Armed Forces

If your employee did not work for you during the period you worked out using the tables on pages 55 to 57:

- 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 are entitled to ASPP and additional paternity leave as long as all the other conditions to entitlement are satisfied.

### Break in employment

This is the same as for OSPP except that your employee must continue to work for you until the week before the ASPP period begins.

### Employee is taken into legal custody

You can't pay ASPP for any ASPP week that your employee is in legal custody or for any week in the pay period after that.

You must give them form ASPP1 *Non-payment of Additional Statutory Paternity Pay (ASPP)* within seven days of being notified of your employee's detention or

sentence. Take a copy of the declaration on form SC7, SC8, SC9 or SC10 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.

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

This is the same as for OSPP (see page 37) except for penalties. For ASPP penalties see below.

### ASPP penalties

Legislation provides that employers failing or refusing to operate the ASPP Scheme correctly can incur penalties. Like those in place for PAYE and NICs, these penalties are civil (not criminal).

The penalties cover the following offences:

- For any failure by you to give your employee the required information the penalty is up to a maximum of £300 and £60 for each day the failure continues.
- The refusal, repeated refusal or failure by you to pay ASPP to your employee 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 attract a maximum penalty of £300 and £60 for each day the failure continues.
- A failure to keep records could make you liable to 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.
- The payment of an incorrect amount of ASPP due to either fraud or negligence could make you liable to a penalty up to £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 ASPP 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.

## 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, The
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland - 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 Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

## Tables showing important dates for OSPP and ASPP (birth)

Baby due between 1 April 2012 and 24 November 2012						
Week baby due			Qualifying Week			Latest start date for employment with you
Sunday	Saturday		Sunday	Saturday		Saturday
01/04/12	to	07/04/12	18/12/11	to	24/12/11	02/07/11
08/04/12	to	14/04/12	25/12/11	to	31/12/11	09/07/11
15/04/12	to	21/04/12	01/01/12	to	07/01/12	16/07/11
22/04/12	to	28/04/12	08/01/12	to	14/01/12	23/07/11
29/04/12	to	05/05/12	15/01/12	to	21/01/12	30/07/11
06/05/12	to	12/05/12	22/01/12	to	28/01/12	06/08/11
13/05/12	to	19/05/12	29/01/12	to	04/02/12	13/08/11
20/05/12	to	26/05/12	05/02/12	to	11/02/12	20/08/11
27/05/12	to	02/06/12	12/02/12	to	18/02/12	27/08/11
03/06/12	to	09/06/12	19/02/12	to	25/02/12	03/09/11
10/06/12	to	16/06/12	26/02/12	to	03/03/12	10/09/11
17/06/12	to	23/06/12	04/03/12	to	10/03/12	17/09/11
24/06/12	to	30/06/12	11/03/12	to	17/03/12	24/09/11
01/07/12	to	07/07/12	18/03/12	to	24/03/12	01/10/11
08/07/12	to	14/07/12	25/03/12	to	31/03/12	08/10/11
15/07/12	to	21/07/12	01/04/12	to	07/04/12	15/10/11
22/07/12	to	28/07/12	08/04/12	to	14/04/12	22/10/11
29/07/12	to	04/08/12	15/04/12	to	21/04/12	29/10/11
05/08/12	to	11/08/12	22/04/12	to	28/04/12	05/11/11
12/08/12	to	18/08/12	29/04/12	to	05/05/12	12/11/11
19/08/12	to	25/08/12	06/05/12	to	12/05/12	19/11/11
26/08/12	to	01/09/12	13/05/12	to	19/05/12	26/11/11
02/09/12	to	08/09/12	20/05/12	to	26/05/12	03/12/11
09/09/12	to	15/09/12	27/05/12	to	02/06/12	10/12/11
16/09/12	to	22/09/12	03/06/12	to	09/06/12	17/12/11
23/09/12	to	29/09/12	10/06/12	to	16/06/12	24/12/11
30/09/12	to	06/10/12	17/06/12	to	23/06/12	31/12/11
07/10/12	to	13/10/12	24/06/12	to	30/06/12	07/01/12
14/10/12	to	20/10/12	01/07/12	to	07/07/12	14/01/12
21/10/12	to	27/10/12	08/07/12	to	14/07/12	21/01/12
28/10/12	to	03/11/12	15/07/12	to	21/07/12	28/01/12
04/11/12	to	10/11/12	22/07/12	to	28/07/12	04/02/12
11/11/12	to	17/11/12	29/07/12	to	04/08/12	11/02/12
18/11/12	to	24/11/12	05/08/12	to	11/08/12	18/02/12

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

## Tables of latest start dates for employment for OSPP and ASPP (adoption)

Child matched between 1 April 2012 and 27 October 2012		
Matching week		Latest start date for employment with you
Sunday	Saturday	Saturday
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
27/05/12	to 02/06/12	10/12/11
03/06/12	to 09/06/12	17/12/11
10/06/12	to 16/06/12	24/12/11
17/06/12	to 23/06/12	31/12/11
24/06/12	to 30/06/12	07/01/12
01/07/12	to 07/07/12	14/01/12
08/07/12	to 14/07/12	21/01/12
15/07/12	to 21/07/12	28/01/12
22/07/12	to 28/07/12	04/02/12
29/07/12	to 04/08/12	11/02/12
05/08/12	to 11/08/12	18/02/12
12/08/12	to 18/08/12	25/02/12
19/08/12	to 25/08/12	03/03/12
26/08/12	to 01/09/12	10/03/12
02/09/12	to 08/09/12	17/03/12
09/09/12	to 15/09/12	24/03/12
16/09/12	to 22/09/12	31/03/12
23/09/12	to 29/09/12	07/04/12
30/09/12	to 06/10/12	14/04/12
07/10/12	to 13/10/12	21/04/12
14/10/12	to 20/10/12	28/04/12
21/10/12	to 27/10/12	05/05/12

Child matched between 28 October 2012 and 25 May 2013		
Matching week		Latest start date for employment with you
Sunday	Saturday	Saturday
28/10/12	to 03/11/12	12/05/12
04/11/12	to 10/11/12	19/05/12
11/11/12	to 17/11/12	26/05/12
18/11/12	to 24/11/12	02/06/12
25/11/12	to 01/12/12	09/06/12
02/12/12	to 08/12/12	16/06/12
09/12/12	to 15/12/12	23/06/12
16/12/12	to 22/12/12	30/06/12
23/12/12	to 29/12/12	07/07/12
30/12/12	to 05/01/13	14/07/12
06/01/13	to 12/01/13	21/07/12
13/01/13	to 19/01/13	28/07/12
20/01/13	to 26/01/13	04/08/12
27/01/13	to 02/02/13	11/08/12
03/02/13	to 09/02/13	18/08/12
10/02/13	to 16/02/13	25/08/12
17/02/13	to 23/02/13	01/09/12
24/02/13	to 02/03/13	08/09/12
03/03/13	to 09/03/13	15/09/12
10/03/13	to 16/03/13	22/09/12
17/03/13	to 23/03/13	29/09/12
24/03/13	to 30/03/13	06/10/12
31/03/13	to 06/04/13	13/10/12
07/04/13	to 13/04/13	20/10/12
14/04/13	to 20/04/13	27/10/12
21/04/13	to 27/04/13	03/11/12
28/04/13	to 04/05/13	10/11/12
05/05/13	to 11/05/13	17/11/12
12/05/13	to 18/05/13	24/11/12
19/05/13	to 25/05/13	01/12/12



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 in December 2011.

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