

# General Maternity Guidance for rotational Junior Doctors in Training

June 2013

## 1. Maternity leave

### When to tell the employer

Under normal circumstances, by the end of the 15<sup>th</sup> week before the expected week of childbirth (EWC) the employee must have notified their employer of their pregnancy, the EWC, and the date they want their Ordinary Maternity Leave (OML) to start.

### How long is Maternity Leave?

There is a statutory period of compulsory maternity leave of two weeks starting with the date the baby is born.

There is a statutory entitlement to 26 weeks of OML, beginning no earlier than the 11th week before the expected week of childbirth (EWC), followed by an entitlement to a further 26 weeks of Additional Maternity Leave (AML). Contractual rights, with the exception of pay, continue during OML and AML.

### When to take Maternity Leave

Maternity leave can start at any time after the beginning of the 11th week before the baby is due. The 11th week is classed as starting on the Sunday at the beginning of the 11th week.

## 2. Maternity pay

Maternity pay can have two components depending on eligibility. Occupational Maternity Pay (OMP) which depends on length of NHS service, and Statutory Maternity Pay (SMP) which depends on both length of service with one employer and continuity of employment. The qualifying criteria for each are different.

Individuals who are not eligible for SMP may be eligible for Maternity Allowance (MA).

### Occupational Maternity Pay (OMP)

To qualify for OMP the employee must have had 12 months continuous service with one or more NHS employers (in the case of GP trainees this includes GP practices) by the start of the 11th week before their EWC, and be employed by the NHS at that point.

The amount of OMP payable is based on the employees' average weekly earnings, averaged over a period of at least eight weeks up to and including the last payday before the end of the qualifying week. The qualifying week is currently the 15th week before the week the baby is due.

Occupational Maternity Pay (OMP) is currently 8 weeks at full pay and 18 weeks at half pay.

*Employers and employees are reminded that this is offered as a guide to the contractual and statutory provisions, and that they must refer to the most recent contractual and legislative documentation from the relevant authorities to confirm individual entitlements and responsibilities.*

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## Statutory Maternity Pay (SMP)

To qualify for Statutory Maternity Pay, the doctor must have been employed by the same employer for a continuous period of at least 26 weeks into the 15th week before EWC. She must also have average earnings of at least the Lower Earnings Limit for National Insurance purposes.

For Statutory Maternity Pay purposes, the employer is the person or organisation responsible for paying the employers' share of the National Insurance (NI) contributions for that employee at the 15th week before the baby is due.

Under a single lead employer arrangement, a move between posts on rotation will not break the 26 week continuity of employment requirement for Statutory Maternity Pay (SMP) purposes. This is because the organisation responsible for paying the employers' share of the NI contributions remains the same. Without a single lead employer, moves between trusts, between practices, and between trusts and practices, may break the continuity of employment and affect SMP entitlement. This is because the organisation responsible for paying the employers' share of the NI contributions changes when the doctor rotates.

If the employee satisfies the qualifying conditions, and leaves their employer after the start of the 15th week before EWC, it does not matter why she left or that she may not be coming back to the NHS - she is entitled to SMP to be paid by her original employer. If the doctor moves to a new employer (hereafter referred to as Employer B) before her baby is born, the first employer (hereafter referred to as Employer A) is still liable to pay SMP. SMP payments from Employer A cease at the end of the 39 weeks of SMP entitlement or on the doctor's return to work after the birth, whichever is the sooner. Should the doctor choose to return to work before the end of their SMP entitlement, she should communicate the date of her return to work to Employer A as well as Employer B to ensure that overpayments of SMP do not occur.

It is the employers' responsibility to recover SMP payments from HMRC. The amount an employer is reimbursed normally depends on the total gross employer **and** employee Class 1 NIC's in the last complete tax year before the Saturday of the employees' qualifying week.

Further information for employers about SMP can be found at [www.businesslink.gov.uk](http://www.businesslink.gov.uk) or from the HMRC Employer Helpbook for Statutory Maternity Pay at <http://www.hmrc.gov.uk/helpsheets/e15.pdf>

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## Maternity Allowance (MA)

If there is no entitlement to SMP the doctor may be entitled to Maternity Allowance (MA). She should obtain form SMP1 from her employer to help support her claim for Maternity Allowance through Jobcentre Plus. Further information about Maternity Allowance, rates of pay and the claim form can be found at <http://www.direct.gov.uk/parents>

## Paying SMP

SMP is paid at 90% of full pay for 6 weeks, and at £136.78 (from 1 April 2013) for 33 weeks (39 weeks in total) and is liable for tax and National Insurance contributions as it is treated as earnings. If OMP is payable, SMP is included in the 8 weeks of full pay from the employer. SMP is also payable in addition to the 18 weeks of half pay.

## Paying MA

MA is paid at £136.78 a week (from 1 April 2013) for 39 weeks or 90 per cent of the employee's average gross weekly earnings (before tax), whichever is the smaller. MA is not liable for tax and National Insurance contributions and MA is not included in the 8 weeks of full pay (if eligible for OMP) as it is claimed and paid for through Jobcentre Plus and not the employer. Employers should subtract the amount of MA payable from the employee's earnings if OMP and MA are payable.

## 3. End of training or fixed term contract

If the employee is entitled to OMP and their contract of employment expires after the 11<sup>th</sup> week before her EWC, then the terms and conditions state that the employer must extend the contract to allow them to remain employed during the period of maternity leave. In addition, the contract should be extended for any agreed additional period to enable them to complete any training missed during that leave if necessary. For GP Registrars this is subject to the agreement of the Director of GP Education. Please also note paragraph 5 below for details about annual leave in this scenario.

Notwithstanding the above, if all parties agree that it would be in the best interests of the doctor for her to rotate (all parties being Employer A, Employer B, the Deanery and the doctor) then the doctor should have the option to rotate. No single party can be forced to accept the decision of the

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other parties if they have concerns and should there be any disagreements then the default provisions of the terms and conditions as detailed above will automatically apply.

If the doctors contract expires before the 11<sup>th</sup> week before her EWC and she rotates then she will not meet the conditions for payment of OMP from Employer A and this will be payable by Employer B. Employer A's liability will be solely for SMP, subject to the employee being entitled to that benefit.

If the doctor comes to the end of their training programme and her contract expires before the 11th week before her EWC then she will not meet the conditions for payment of OMP. The employer's liability will be solely for SMP, subject to the employee being entitled to that benefit.

Please note the following, and see the relevant contractual documentation for further details.

## 4. Expiration of contract and movement between posts

In NHS posts, extension of the contract of employment in certain circumstances to cover the 52 weeks of paid and unpaid maternity leave is contractual and should be automatic unless alternative arrangements are agreed by all relevant parties (see previous page).

Under a single lead employer arrangement a move between posts on rotation will not break the 26 week continuity of employment requirement for Statutory Maternity Pay (SMP) purposes. Without a single lead employer, moves between trusts, between practices, and between trusts and practices (for example), may break the continuity of employment and affect SMP entitlement.

## 5. Annual leave

An employee shall continue to accrue their normal annual leave entitlement during their period of Statutory Maternity Leave (SML). An employee may not take annual leave during their SML; employers should instead allow the employee to take their annual leave before and / or after her SML. It is prudent to discuss and make arrangements with employees regarding any untaken annual leave before her SML commences. The employer contracting the doctor during their maternity leave will be eligible to pay for any accrued annual leave. This is the case even when extending the contract purely for the specific purpose of contracting the employee during her maternity leave.

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## 6. Out of Programme Experience (OOPE)

Typically, OOPEs are not classed as NHS employment as they are not usually undertaken with NHS organisations. However, the hospital medical and dental terms and conditions specifically state that breaks in service due to OOPE should be disregarded (though will not count as service). In practical terms, the employer would need to examine the employees' previous experience before their OOPE period in order to determine whether they qualify for OMP. If they meet the criteria for OMP then the employer should assess the amount of OMP payable following the normal method (see previous page).

It should be assumed in the first instance that periods of OOPE will break continuity in terms of SMP entitlement unless the OOPE is taken with the same NHS employer.

## 7. Sickness prior to childbirth

It is not uncommon for a pregnant employee to experience some form of sickness in the months leading up to the period of Maternity leave. It is the responsibility of the employer to undertake a risk assessment of an employees' working conditions to assess whether the employee or her child would be at risk were she to continue with her normal duties.

Absence prior to the last four weeks before the EWC, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal leave provisions.

If sickness is experienced then it should be managed under the normal sickness provisions. However, if an employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee has worked, whichever is the later.

Odd days of pregnancy related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously agreed.

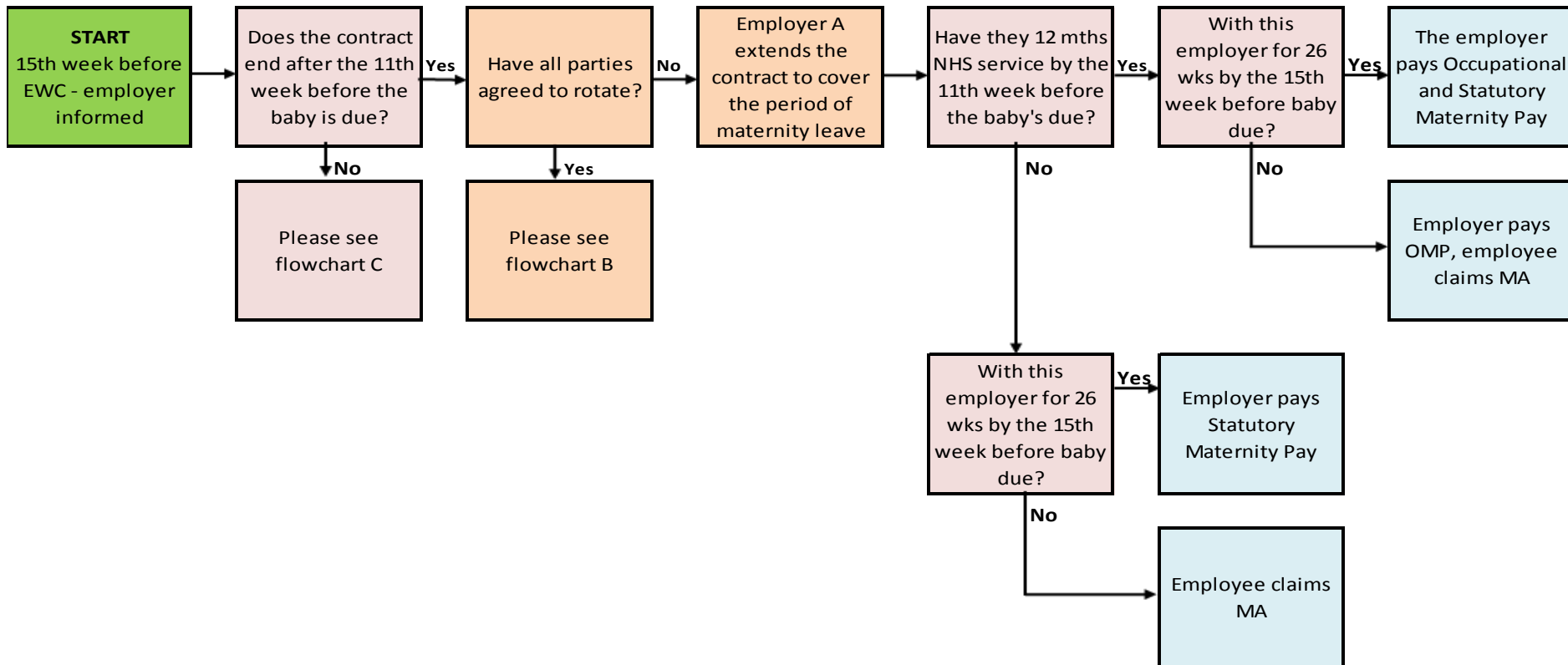
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# Flowchart– an indication of actions to take and what to expect when planning maternity leave

The flowcharts below have been designed to give employers a quick checklist of their obligations under the current Maternity provisions.

Flowchart A demonstrates what happens if a contract expires after the 11th week before the EWC and the employee is staying with employer A.

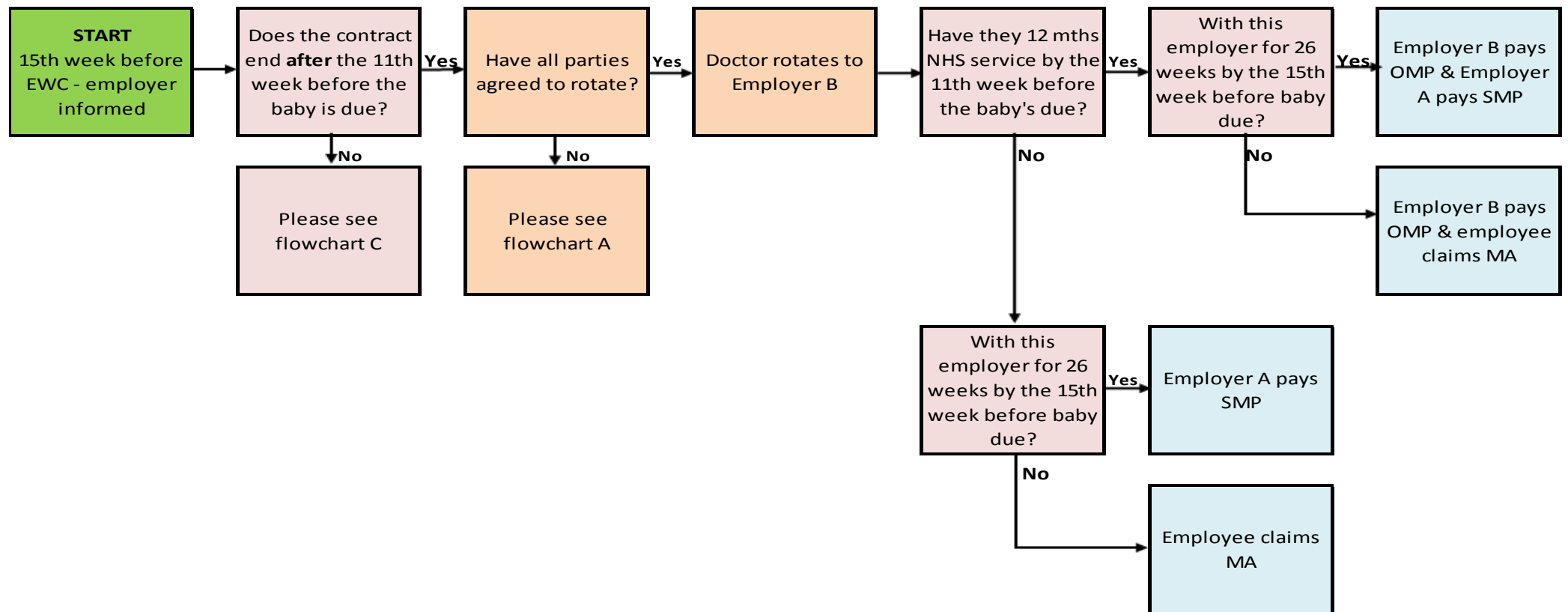
## Flowchart A



# Flowchart– an indication of actions to take and what to expect when planning maternity leave

Flowchart B demonstrates what happens if a contract expires after the 11th week before the EWC and it is agreed that the employee will rotate to employer B. We would only expect this to happen if the trainee rotates to another NHS employer. If they rotate to a non-NHS employer their entitlement to OMP may be effected.

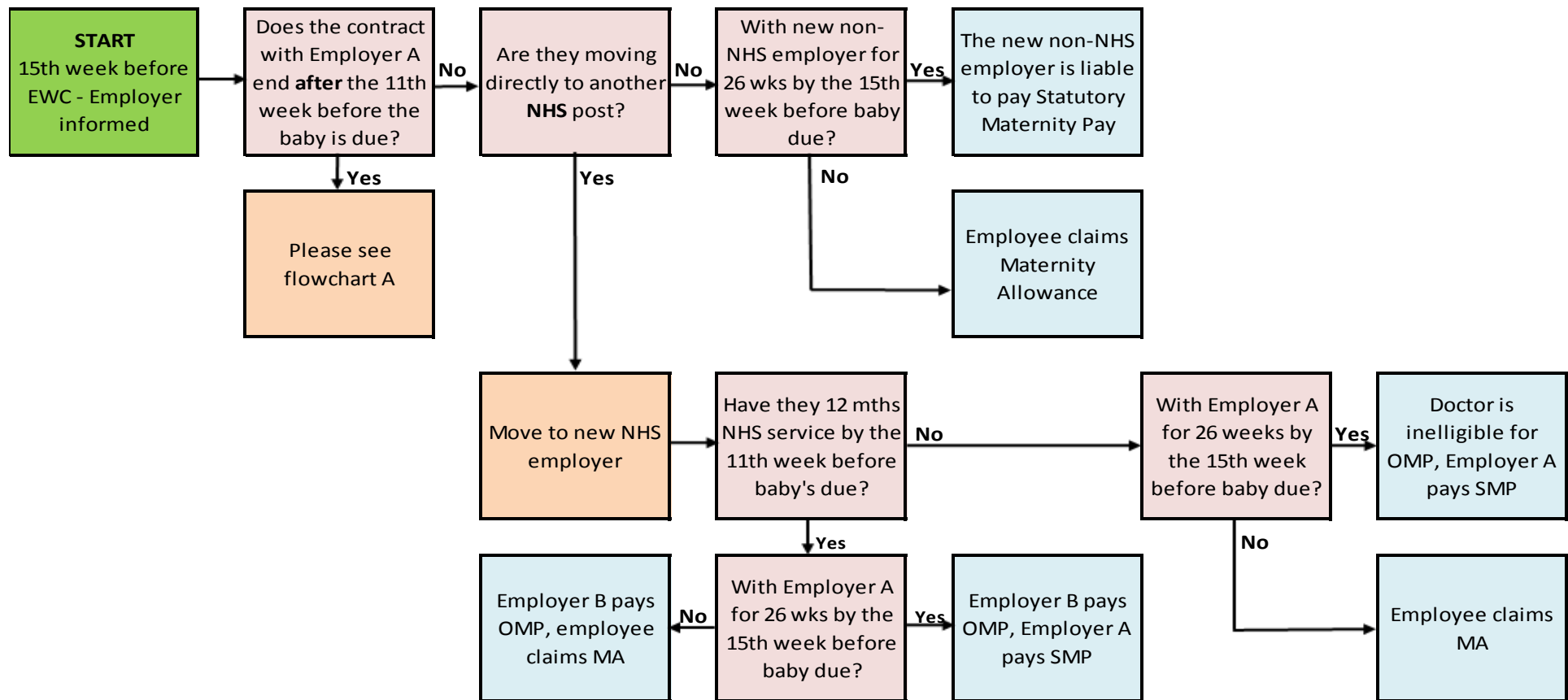
## Flowchart B



# Flowchart– an indication of actions to take and what to expect when planning maternity leave

Flowchart C demonstrates what happens if a contract expires between the 15th and 11th week before the EWC and the employee has rotated to employer B.

**Flowchart C**





# Flowchart - an indication of actions to take and what to expect when planning maternity leave

These flowcharts are for guidance only, however they draw elements directly from the Terms and Conditions of Service many of which are contractual obligations. We recommend you use this factsheet in conjunction with the applicable set of Terms and Conditions of Service.

In addition, the funding arrangements may differ slightly to those stated in the flowcharts depending on whether there are specific local arrangements between employers and Deaneries in different regions. Employees are always advised to speak with their employer regarding employment issues in the first instance to clarify the arrangements in place.