

## **GUIDE TO SHARED PARENTAL LEAVE**

### **INTRODUCTION**

From 1 December 2014, parents (natural or adoptive) of a child born (or adopted) on or after 5 April 2015 will be able to share most of the statutory leave and pay that are currently only available to women (or to one adoptive parent). The new name for this concept is “shared parental leave”, although it is quite separate from the parental leave rights that exist at present.

Although the concept of SPL is simple, the regulations that implement it are extremely complex and detailed.

In this Guide we explain these elements in a series of easy to follow flowcharts. You will also find a useful case study, with answers, covering a typical scenario.

## SPL FRAMEWORK

The overall framework of SPL is as follows:

- The mother will still be obliged to take two weeks compulsory maternity leave.
- Parents can share the remaining 50 weeks maternity leave and 37 weeks statutory maternity pay. They can decide to share even after the mother has already or ended her started maternity leave.
- Each parent must have 26 weeks' continuous service before they can take SPL.
- Each parent will need to give their employer at least eight weeks' notice before they can take SPL. They will also be required to give a non-binding indication of their proposed SPL plans i.e. how much they propose to take and in what pattern.
- Parents can take SPL at the same time or separately.
- They can ask to take SPL in separate blocks, each of not less than a week. An employer does not have to agree to this and there will be a two-week discussion period in which the parties can try to agree arrangements. If they can't agree, SPL must be taken in one block but the employee can choose the start date.
- Each parent will have up to 20 SPLIT ("share parental leave in touch") days – these are similar to (and in addition to) KIT days.
- The same rights to return to work will apply as after maternity leave: each parent will have the right to return to the same job if they have taken not more than 26 weeks SPL; if they have taken more than 26 weeks SPL, they will have the right to return to the same job as far as reasonably practicable or to a suitable alternative.
- A father who takes SPL will have the same enhanced protection against detriment and dismissal that a woman has during her protected period.

All of the above will also apply to adopting parents.

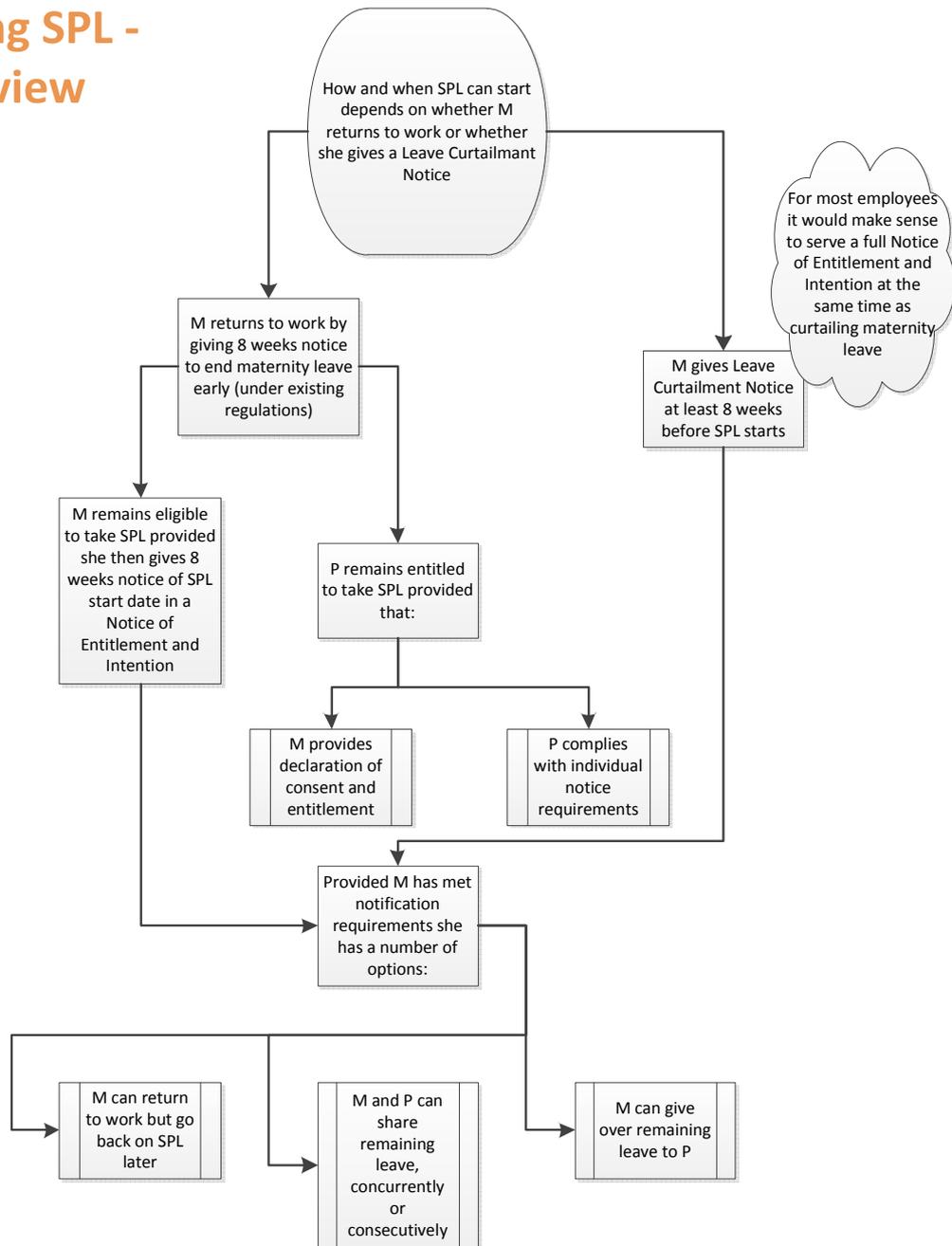
## **FLOWCHARTS**

The main areas of SPL that employers will need to navigate in practice are:

- the overall rules for taking SPL;
- the specific eligibility criteria; and
- the notification requirements.

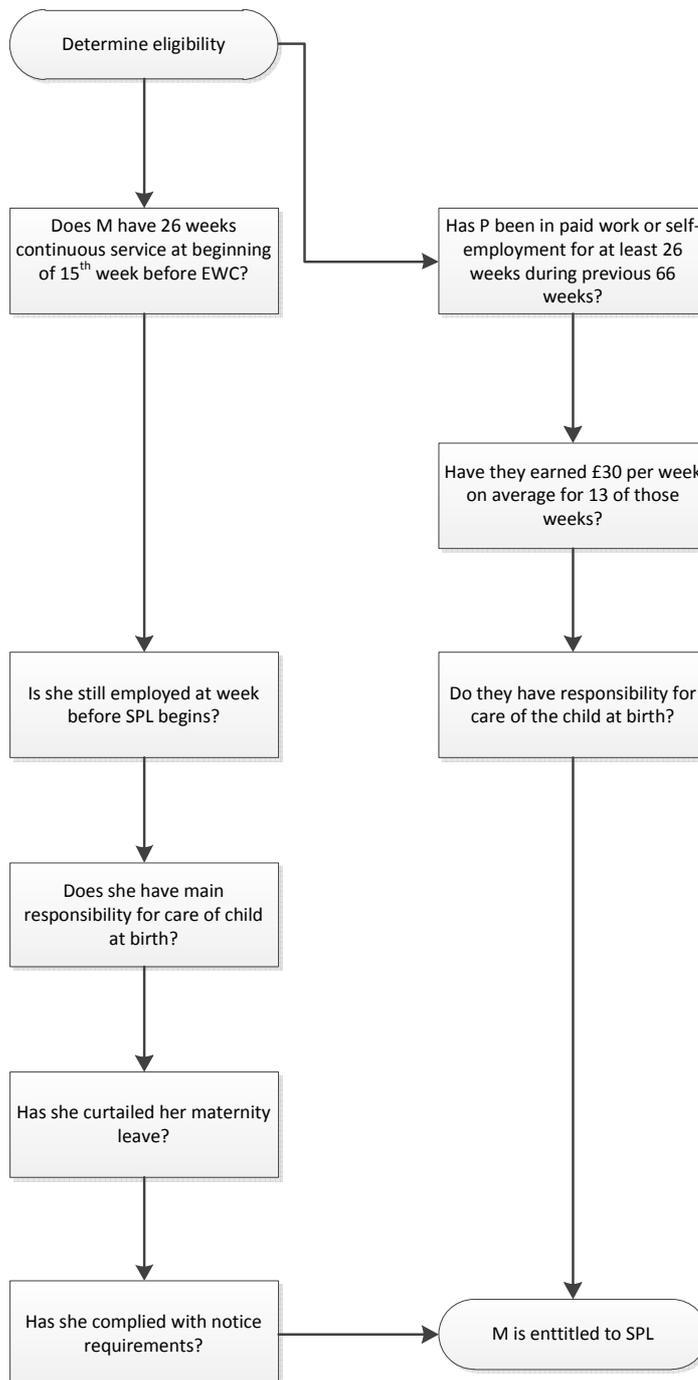
The flowcharts on the following pages set out the main elements of the rules in these areas.

## Taking SPL - overview



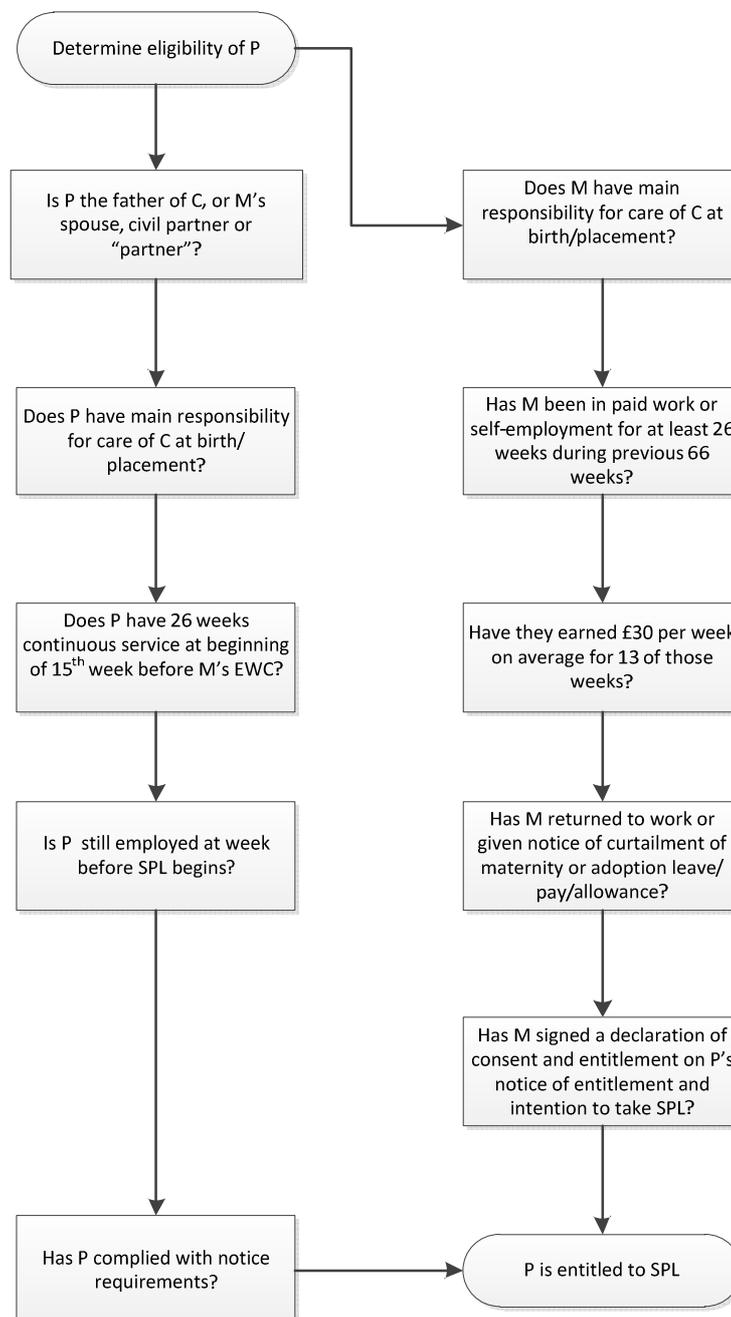
## Eligibility of Mother or main parent (“M”)

Determining eligibility for SPL involves looking at the circumstances of the mother or main parent (“M”), the other parent (“P”) and the child (“C”). This flowchart looks at conditions that M must satisfy.

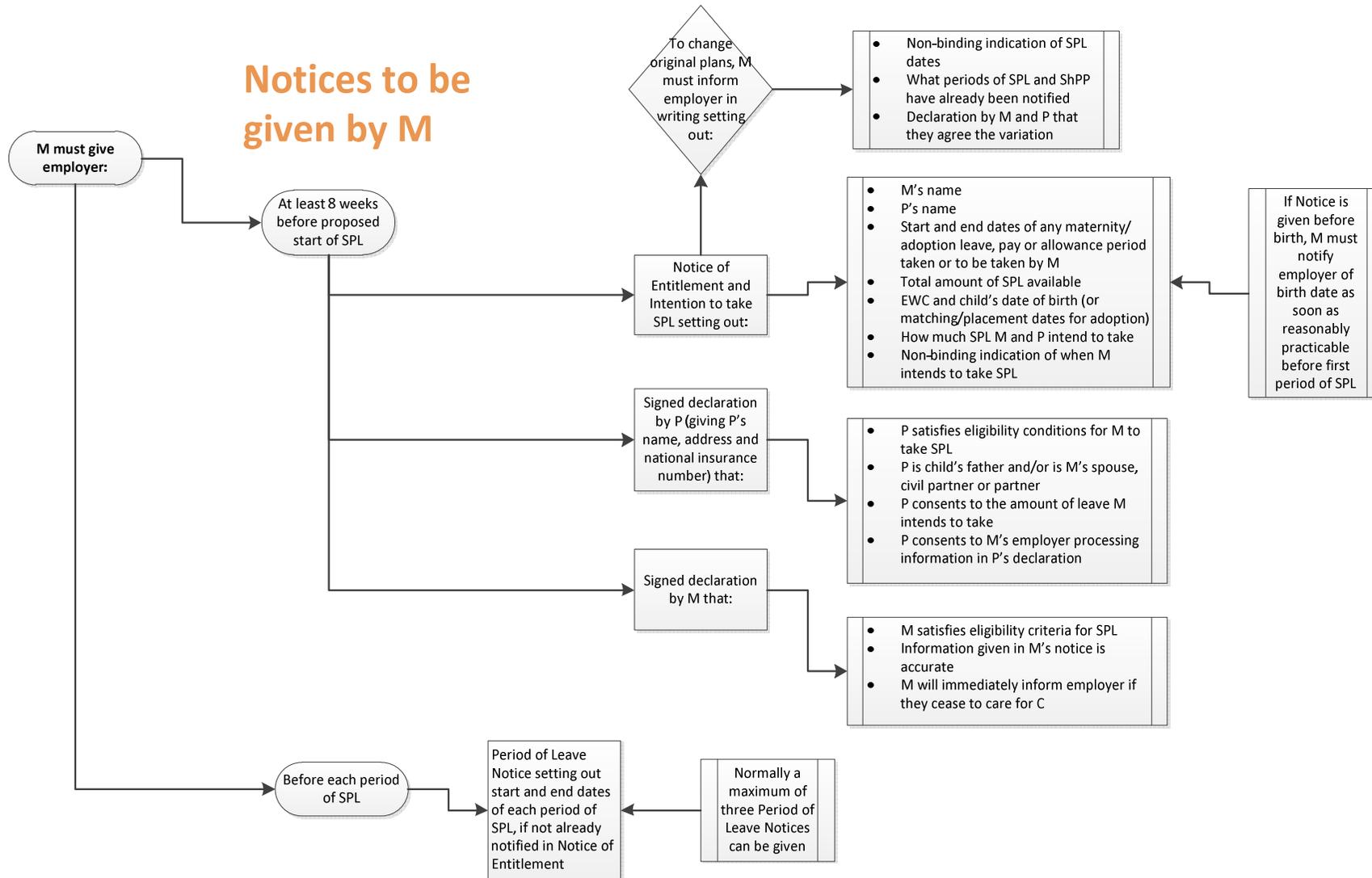


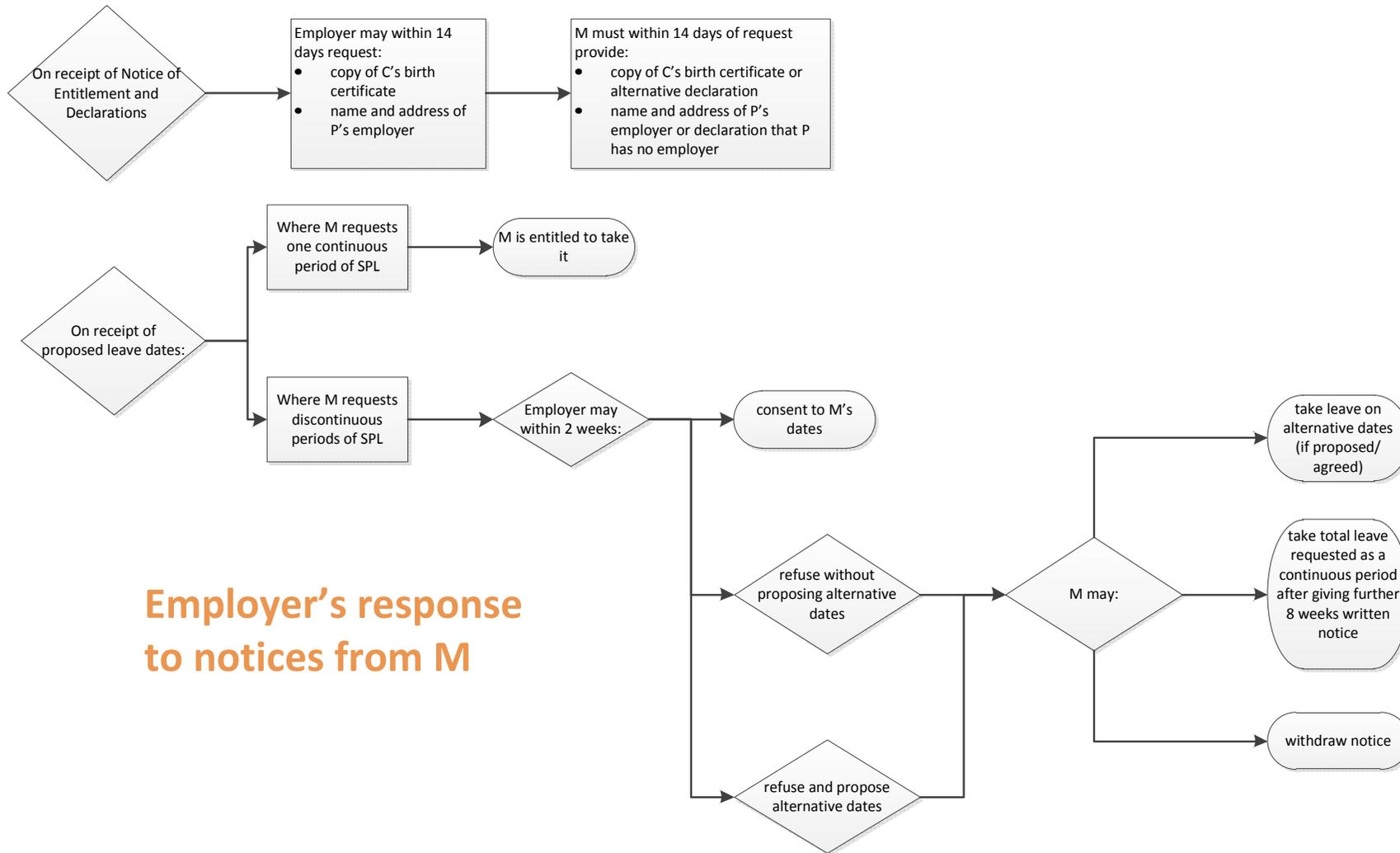
## Eligibility of other parent ("P")

Determining eligibility for SPL involves looking at the circumstances of the mother or main parent ("M"), the other parent ("P") and the child ("C"). This flowchart looks at conditions that P must satisfy.



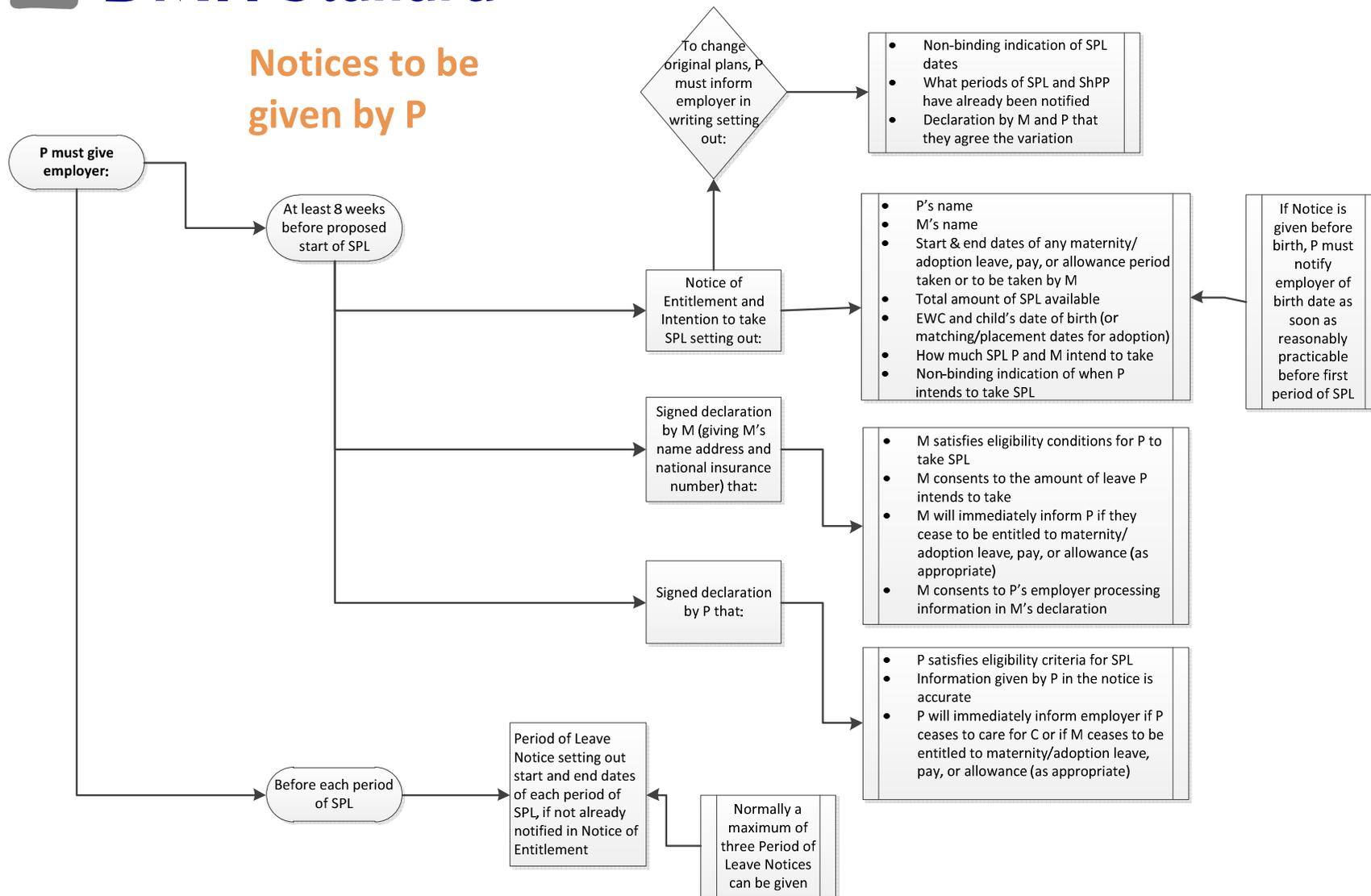
## Notices to be given by M

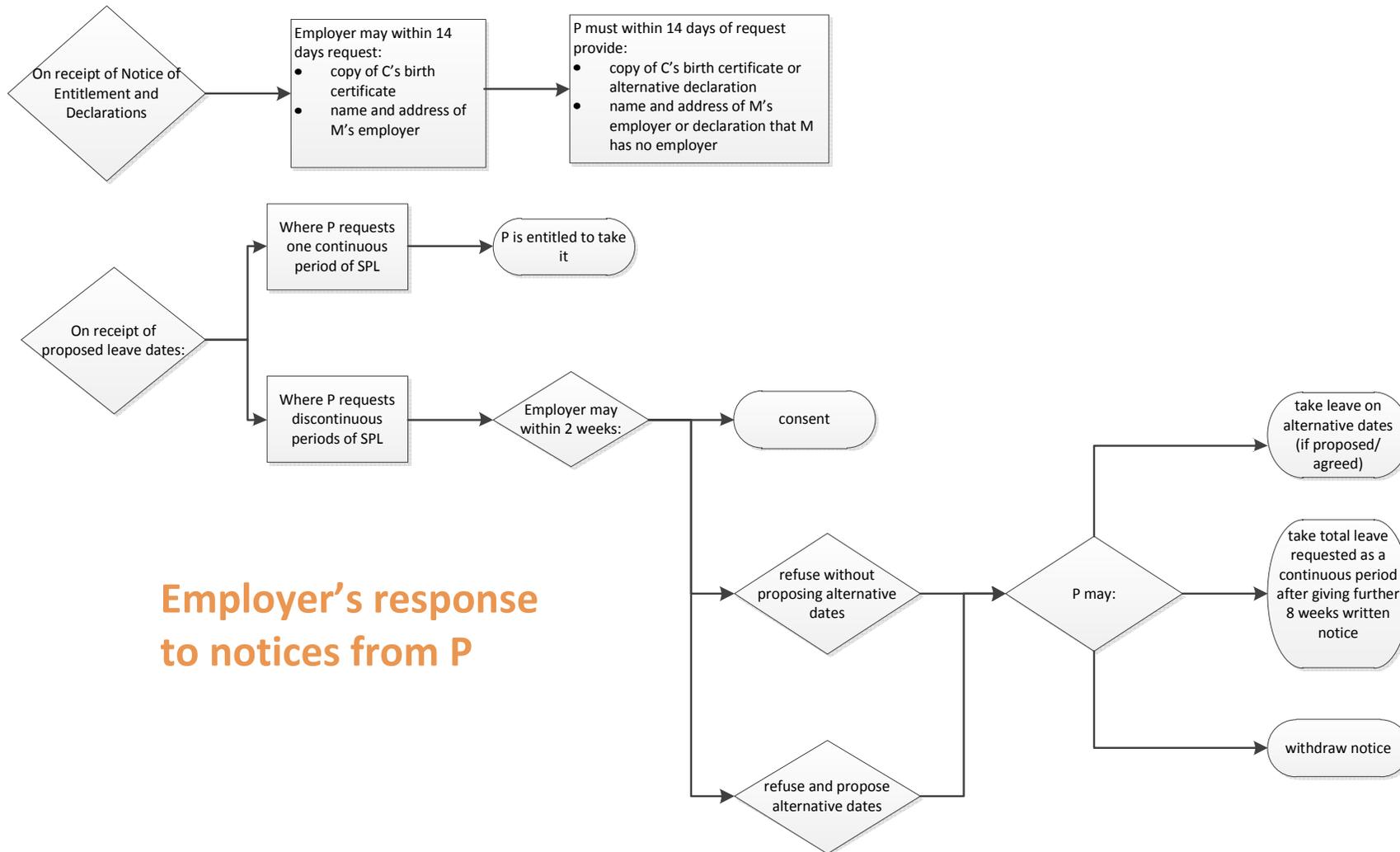




## Employer's response to notices from M

## Notices to be given by P





## Employer's response to notices from P

## **CASE STUDY**

Kate and William are expecting their second child in May 2015.

William has just got a new job, whilst Kate has been working on and off since leaving university. She currently works for a local charity as a part time employee, 3 days a week. She has been doing that job since 1<sup>st</sup> July 2014. The post is for a fixed period until 30 September 2014. At that stage she plans to look for another job.

They already have one child. They have heard that it might be possible for them to both have time off to look after the new baby and they have asked you if this is possible.

**QUESTION 1:** What questions would you need to ask Kate and William in order to answer their question?

Assuming they are entitled to shared parental leave:

**QUESTION 2:** They want to know if they can take any time off together and, if so, how much and how they would go about doing this. What would you tell them?

**QUESTION 3:** Finally, they tell you that William's grandmother may be able to help look after the new baby but they are not sure. They want to know when they will have to make up their minds about what they are going to do about taking leave. What would you tell them?

## ANSWERS TO CASE STUDY

### QUESTION 1

**A** When is the child due? Is it after 5 April 2015. If not, current regime applies.

**B** Will Kate be entitled to statutory maternity leave, statutory maternity pay or maternity allowance in respect of the child? If not, neither Kate nor William will be entitled to SPL.

**C** If Kate is so entitled, she will need to be prepared to curtail her entitlement and/or return to work in order for her or William to take SPL.

**D** Will either satisfy the “employment and earnings” test so that the other may be entitled to take SPL? With William there is probably not a problem, although he might lose his employment. With Kate, will she have been employed or self-employed in at least 26 of the 66 weeks immediately before the EWC? What did she earn during those weeks? She needs on average £30 a week during any 13 of those weeks.

**C** Will they both be employees? If one of them is not, then that person will not qualify for SPL as they have no employer. However, William may still be entitled to SPL if Kate is not an employee. He would need to satisfy the relevant eligibility requirements for “other parents” and Kate would need to be entitled to maternity allowance and satisfy the “employment and earnings” test.

**D** For either to be entitled to take SPL, they must satisfy the continuity of employment test, 26 weeks employment at end of 15<sup>th</sup> week before EWC.

**E** To be entitled to take SPL, each would need to be employed in the week before any period of SPL is due to commence. Assuming she satisfies all the other eligibility requirements (including the “continuity of employment” test), will Kate satisfy this further requirement if she is only working on and off?

**F** Will they respectively be main carers (aside from other parent)?

### QUESTION 2

**A** Yes, can take SPL concurrently.

**B** How much depends upon when Kate curtails her maternity leave, pay or allowance. Total amount of SPL available is 52 weeks less maternity leave, pay or allowance period taken/received by Kate. Kate and William then need to decide how to share that SPL

**C** How they take it:

- Kate curtails maternity leave, pay or allowance by giving her employer (or Job Centre for maternity allowance) a leave curtailment notice and (if applicable) a notice of entitlement and intention to take SPL (at least 8 weeks before any SPL to be taken) and a declaration of consent and entitlement to her employer.
- William gives employer notice of entitlement and intention to take SPL (min 8 weeks before any SPL to be taken).
- both give their employers a period of leave notice at least 8 weeks before the start date. Can be given at same time as notice of entitlement and intention).
- all SPL to be taken within 1 year of birth.

**D** Don't forget availability of paternity leave to William.

### **QUESTION 3**

**A** They can make up their minds very late. The process is commenced by Kate serving a curtailment notice or returning to work. In some circumstances the curtailment notice can be revoked.

**B** Kate and William must give a notice of intention to take SPL, but can leave this until 8 weeks before they plan the SPL to start. This is non binding and must not be treated as a period of leave notice. The notice of intention can be varied subsequently by Kate and William.

**C** Kate and William must give a period of leave notice at least 8 weeks before SPL starts. However they can seek to vary this.

**D** Kate and William can each give a maximum of three period of leave notices to their employer.

**E** Each will be entitled to take single blocks of leave on each of up to three occasions when notice is given. However, their employer does not have to agree to a request/notice for staggered/discontinuous leave.