

Covid-19: Job Retention Scheme – FAQs for employers

As a result of the Coronavirus outbreak many employers are faced with the reality that they cannot cover staff costs and/or will not be able to in the foreseeable future.

In response, the Government has announced a new initiative, the Coronavirus Job Retention Scheme (Scheme) to assist employers during these uncertain and unprecedented times.

Note: FAQs as at 10 April 2020 – changes since last edition are highlighted in blue.

These FAQs outline details of the Scheme as known to date. Given the fast-paced situation, and anticipated further detail, always check the latest UK government guidance (currently: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>)

These FAQs are intended for general guidance only. Please contact us for advice on specific situations.

1. Coronavirus Job Retention Scheme

1.1 What is the Coronavirus Job Retention Scheme?

The Scheme is a temporary measure introduced by the UK Government to assist employers adversely affected by the Coronavirus outbreak. The Scheme will allow employers to apply to HMRC for a grant of 80% of furloughed employees' monthly wages (up to a cap of £2,500 per month). It will also allow employers to claim associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions [on that subsidised furlough pay](#).

1.2 What are furloughed employees?

'Furlough' is not a term ordinarily used in UK employment law. Under the Scheme, furlough is being used to describe a period of absence that is agreed between the employer and employee, as an alternative to the employee being laid off or made redundant.

1.3 What happens to an employee who has been furloughed?

The employee will essentially be laid off work, i.e. they will be asked not to attend the workplace and will not be given any work for a minimum period of 3 weeks. However, they will remain on the payroll and in employment. They will be paid up to 80% of their wages during furlough. Employers can top up to 100% but are not obliged to do so.

1.4 Can furloughed employees carry out the occasional piece of work for me while they are on furlough?

The Government has been quite clear that employees on furlough should not undertake **any** work for [or on behalf of](#) their employer [or any linked or associated organisation](#). Therefore, if an employee does carry out work for you [or any linked or associated](#)

[organisation](#) on furlough, grant funding for their wages will be unavailable under the Scheme.

The employee can however take part in voluntary work or voluntary training, provided that they are not providing services to you or for your benefit or generating revenue on your behalf [or any linked or associated organisation](#).

1.5 Can a furloughed employee work for another employer during a period of furlough?

Yes, provided that [\(1\)](#) under the employee's contract of employment they are permitted to work for another employer, [and \(2\) the work is not for a linked or associated organisation](#), they can do so whilst on furlough leave.

Where an employer takes on a new employee who is furloughed from other employment, they will have to refer to the fact the employee is on furlough leave when completing the HMRC 'Starter Checklist for PAYE'.

1.6 Will the employee be taxed during furlough leave?

Yes, the employee's wage will be subject to usual income tax and other deductions.

1.7 Can employees take holiday (or be required to take it) during furlough?

Government guidance is silent on this. Updates to ACAS guidance on 7 April suggest that they can, and that it should be paid at 100% of pay. Contact us to discuss.

1.8 What is the benefit of this Scheme?

In the present circumstances, many employers will already have considered measures such as lay-off, short-time working, unpaid leave and redundancies. This scheme provides employees with generous Government funded wage protection and job security. It may also prevent employees triggering redundancies, potentially avoiding substantial redundancy pay-outs.

2. Eligibility under the Scheme

2.1 Who can apply to the Scheme?

The Scheme is open to all UK employers. Therefore, any UK business, regardless of its size, including recruitment agencies, charities and non-profit organisations will be able to apply. However, the business must have had a PAYE payroll system in place on or before 28 February 2020 be enrolled for PAYE online and have a UK bank account. [HMRC guidance at 9 April 2020 sets out in more detail what information employers will need to make a claim. See 3.6 below.](#)

If your business has gone into administration, the administrator will be able to apply to Scheme on its behalf.

Where employers are receiving public funding for staff costs, employers should in general use these funds to continue to pay staff and not furlough them.

2.2 Will I still be able to apply, even although my business was not forced to shut down by the Government at the time staff were furloughed?

The purpose of the Scheme is to assist businesses who cannot maintain their current workforce because operations have been severely affected by the Coronavirus outbreak. If you elected to close down your offices and place your employees on lay-off, as you experienced financial hardship or there was no work coming in, this is likely to be sufficient for you to apply to the Scheme.

2.3 Which employees can I claim for?

You may make a claim under the Scheme for the following employees;

- full-time employees,
- part-time employees,
- employees on agency contracts,
- employees on flexible or zero-hour contracts.

However, the employee must have been on your PAYE payroll as at 28 February 2020.

Office holders, salaried members of LLPs and workers are also eligible to be furloughed provided they were paid via PAYE.

Foreign nationals on all categories of visa are eligible to be furloughed and grants under the scheme are not counted as 'access to public funds'.

2.4 Can an apprentice be placed on furlough?

Yes, an apprentice can be placed on furlough. They can also continue to train whilst on furlough leave. However, where you require an apprentice to continue training, you must pay them at least the applicable Minimum Wage for the time that they spend training. This may mean that you have to top up the amount you can claim in respect of the apprentice's wages under the Scheme.

2.5 Can company directors be placed on furlough?

The Government confirmed on 4 April 2020, that salaried company directors can be placed on furlough. The difficulty in applying to the Scheme in respect of directors, is that they have statutory duties and obligations which they owe to their company. This would on the face of it render directors ineligible under the Scheme, as one of the eligibility criteria is that a person placed on furlough leave cannot work for their employer.

However, the Government has confirmed that furloughed directors can perform their statutory duties (provided they do no more than would reasonably be judged necessary for that purpose) on furlough leave. They cannot perform any other work for their company during this time.

Where the board of a company decides that a director should be furloughed, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director concerned.

2.6 I have already made several of my employees redundant, does this stop me from applying to the Scheme?

No, provided that the employees who were made redundant meet the conditions set out in 2.3 above, you can still make a claim under the Scheme. However, you would need to rehire those employees and then place them on furlough.

2.7 What if an employee resigned after 28 February 2020, can I re-hire them and place them on furlough?

Yes, the Government guidance provides that where an employee stopped working for you on or after 28 February, you can rehire them and then place them on furlough. This is discretionary, and you are not obliged to do so.

There are a number of considerations before rehiring an employee who has previously resigned or stopped working for you, including that employees will continue to accrue continuous service and potentially employment rights (e.g. right to claim unfair dismissal or a redundancy payment) and will accrue holiday during furlough.

2.7 Can I apply to the Scheme to top up pay for employees on short-time working arrangements?

Unfortunately, you cannot apply to the Scheme in respect of employees who have agreed to reduced hours and reduced pay. Furloughed employees cannot carry out any work for their employer during the period of furlough. This means employees working reduced hours are ineligible under the Scheme.

2.8 I have an employee who is currently on unpaid leave, are they eligible under this Scheme?

If the employee was placed on unpaid leave after 28 February 2020, you can place these employees on furlough and apply under the Scheme.

2.9 I have an employee who is currently self-isolating, are they eligible under this Scheme?

An employee who is self-isolating or absent due to sickness should receive Statutory Sick Pay or contractual sick pay as applicable. If by the time the employee is fit to return, the workplace is no longer open or there is no work for them to do, you can place them on furlough.

Vulnerable employees who are 'shielding' in accordance with public health guidance [and unable to work](#) may be furloughed. The Government has also announced that you can [furlough](#) individuals who need to stay at home with someone who is shielding [and are therefore unable to work](#).

2.10 If I place an employee on furlough leave and they subsequently become sick, are they still furloughed or should they receive statutory sick pay and contractual sick pay where applicable?

[Updated guidance on 9 April clarifies that furloughed employees who become sick must receive at least SSP, but it is up to their employer to decide whether to move them on to SSP or keep them on furlough at the furlough pay rate.](#)

[Employers will be able to claim for *either* SSP or furlough pay – not both. IF SSP is paid, smaller employers may qualify for a rebate of SSP for up to 14 days.](#)

3 Applying to the Scheme

3.1 What steps should I take to apply to the Scheme?

- First, designate employees as furloughed. This will involve considering your workforce and identifying employees you have no work for and who would otherwise be laid off or made redundant.
- If contracts of employment contain a lay-off clause, placing the employee on furlough should be relatively straightforward as the alternative to agreeing to furlough is likely to be unpaid lay-off.
- Even where there is no contractual lay-off clause, the alternative to agreeing to furlough is likely to be redundancy and furlough a better option.
- Discuss the background to the proposal, observing social distancing requirements. Explain that, as an alternative to redundancy or lay-off, you propose to apply for grant funding for wages under the Scheme, and to progress this employees will need to agree to being furloughed
- Write seeking employees' consent to this change to their contractual terms and conditions. Retain a copy of the consent and record the date furlough started.
- **Keep a record of their written consent for 5 years.**
- Where more than 20 employees are involved, you **may** need to engage in a collective consultation processes in order to seek consent to this change to terms and conditions. Contact us to discuss.
- Once the HMRC portal is up and running, you should submit pay details for those employees under the Scheme. Grants are expected to be in payment by the end of April.

3.2 I still require some of my staff to continue working, how do I decide which staff will be furloughed?

When deciding who to place on furlough leave, equality and discrimination laws will apply in the usual way. Options may include the following:

- Identify business-critical staff – who do you need to remain at work to ensure the business is best able to survive? That may mean furloughing junior staff before more senior colleagues but could also mean retaining a more junior member of the team if they have unique core skills. Document your reasoning.
- Consider rotating furlough so that staff are on furlough leave for at least 3 weeks then at work for a number of weeks. The benefit of this is that it would give all staff the opportunity to receive 100% pay for a period and then 80% of furlough pay.
- Ask staff if they wish to volunteer to be placed on furlough and receive 80% of their pay.
- Produce objective selection criteria and score employees in a similar way to a redundancy exercise. Contact us to discuss if this approach is required.

3.3 What if I ask to furloughed staff to return to work, can I place them back on furlough at a later date?

The Government has confirmed that you can place an employee on furlough multiple times – provided that each period of furlough is for a minimum period of 3 consecutive weeks.

3.4 What if an employee refuses to agree to being furloughed?

We do not think many employees will refuse to being furloughed given the alternative may be redundancy. Clear and open communication with employees about the reasons for the proposed furlough leave and the alternatives will minimise issues. If any staff do refuse, contact us to discuss options, including redundancy.

3.5 What period of notice am I required to give employees before they are furloughed?

There is no minimum required period of notice. For some, placing staff on furlough will be time critical and must be done as soon as possible. For others there may be more time to explain the reasons and alternatives to staff. Being as open and transparent as possible will minimise the risk of problems. Communications to employees designating them as furloughed should set out the date it will take effect.

If you are planning to furlough more than 20 employees contact us to discuss as collective consultation requirements **may** apply.

It may help to designate an initial furlough period and set review dates, which may result in the furlough period being shortened or lengthened.

3.6 What information will I need to make a claim under the Scheme?

When making your application to the Scheme, you will need the following information:

- your ePAYE reference number
- the number of employees you have furloughed
- [National Insurance numbers for the employees you want to furlough](#)
- [Names of employees you want to furlough](#)
- [Payroll/works number for the employees you want to furlough](#)
- [your Self Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number](#)
- the claim period (start and end date of furlough)
- the amount claimed for (minimum length 3 weeks)
- your bank account number and sort code
- your contact name
- your phone number

4. Funding under the Scheme

4.1 What can I claim under the Scheme?

You will be able to apply using the HMRC portal for funding for certain wage costs in relation to your furloughed employees. These comprise:

- for full time and part-time salaried employees, the lower of 80% of their salary before tax or £2,500 per month
- where an employee's hours vary and they have been employed for 12 months, the higher of (a) the same month's earnings from the previous year, or (b) average monthly earnings in the 2019-2020 tax year
- where an employee's hours vary and they have been employed for under a year, average monthly earnings since they started work
- for employees who started in February 2020, pro-rated earnings to date
- Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on [the furlough pay](#).

In calculating reference pay, you can claim for any regular payments you are obliged to pay employees, including wages, past overtime, fees and compulsory commission payments. *Discretionary* bonus (including tips) and commission payments and non-cash payments are excluded.

[Employers must pay all the grant they receive under the scheme to furloughed employees in the form of money – and not use it to subsidise benefits or otherwise reduce the subsidised wage.](#)

4.2 How long will I need to wait before receiving this funding?

Given that this Scheme was announced relatively recently in response to the Coronavirus outbreak, there is presently no system for applying for or issuing funding. A portal is being created by HMRC so that applications can be submitted, and it is expected this will be up in running in the next few weeks with payments made by the end of April 2020. As such it may be a matter of weeks or months before you receive the funding.

As you will be required to pay furloughed employees 80% of their wages in the interim, this may present some cash-flow issues. If this is the case you should consider other Government initiatives, including government loans.

4.3 How long will the Scheme provide this funding?

The Government has confirmed that where the Scheme applies, they will provide this funding for at least three months from March 2020. Grants will only be payable from the point employees are designated as furloughed.

4.4 Do I need to pay employees the difference between the 80% that I can claim under the Scheme and their normal wage?

Provided that your employees agree to being paid 80% of their wages or the statutory cap of £2,500 (i.e. the sum you can claim under the Scheme) you are not required to top up so that they are receiving normal income, but you can do so.

4.5 How will I receive the funding?

After you have made your claim using the HMRC portal and provided you are eligible for the grant, HMRC will pay you via BACS payment to the UK bank account provided in the application form.

The above advice is based on Government information provided so far, and is subject to change as more details become available. It is provided for general guidance only and we recommend you seek advice on specific issues

For further guidance and support, you can contact:

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