



# Job Retention Scheme – Maximising the Prospects of a Successful Claim

It needs to be recognised that there are inconsistencies between the Government Guidance (which was last updated on 17 April 2020) and the Treasury Direction dated 15 April 2020 (and of course the guidance has been through various iterations over the last weeks, with requirements and points of emphasis changing). This note sets out our best view of how things will work (as at 8pm on Sunday 19 April 2020). There were further guidance documents published on 17 April 2020, in preparation for the "go live" date of 20 April 2020. While one might expect the latest versions of the Government guidance documents to be in final (or near-final) form, there may well be further updates and clarifications from the Government and its representative bodies – despite the portal going live on 20 April 2020. We will continue to update this document where material changes are made

## 1. How will a claim be made?

- Employers will be required to submit information to HMRC about employees that have been furloughed and their earnings through a new online portal. To access the system on GOV.UK employers (or their payroll agents) will need a Government Gateway ID and password and an active PAYE enrolment.
- The online portal will open on 20 April 2020. The latest guidance confirms that payments will be received by employers via BACS into their nominated bank account six working days after submitting a claim.
- The Direction states that an employer and employee must have agreed in writing (which may be in electronic form such as email) that the employee will be furloughed and will cease all work. Whilst the guidance is less prescriptive, the safest course of action will be to ensure that you have written consent from all furloughed employees. Either way, the key is that there must be an agreement in place in respect of the furlough leave. More information about the legal requirements to be furloughed can be found [here](#).
- A step-by-step [guide](#) has been released by the Government to inform employers how to prepare to make a claim.
- A further [guide](#) explaining how to calculate the amount of the claim has also been released by the Government. The document in respect of how to calculate the claim is not straightforward – it will require your payroll staff to take time and care over the calculations. There are worked examples within that guidance which should be carefully tracked-through.
- This note includes the key information from all of the Government's guidance documents and the Treasury Direction as at 20 April 2020.

## 2. Who can be included in a claim?

- Claims can be made by all UK employers that have created and started a PAYE payroll scheme on or before 19 March 2020, have enrolled for PAYE online and have a UK bank account.
- Claims can be made in respect of individuals who were on the PAYE payroll on or before 19 March 2020, and who were notified to HMRC on a real time information ("RTI") submission on or before 19 March 2020 (i.e. an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020). This includes full-time and part-time employees and individuals on flexible or zero-hour contracts. In order to be eligible, individual employees must be furloughed for a minimum period of 3 consecutive weeks.
- Claims can only be made for employees who have been furloughed, i.e. those who have been "placed on a leave of absence" and who do not undertake any work for or on behalf of their employer or any associated or linked employer (including providing services or generating revenue), but who have been kept on payroll.

Included	Excluded
<p>Employees who were on payroll (i.e. notified to HMRC on an RTI submission on or before 19 March 2020).</p> <p>Employees who were employed as of 28 February 2020 and on payroll and made redundant or stopped working for the employer after that period and prior to 19 March 2020 can qualify for the scheme, if the employer re-employs them and puts them on furlough. This applies even if the individual is not re-employed until after 19 March 2020.</p> <p>However, the latest guidance clarifies that if an individual has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, a former employer should not re-employ them, put them on furlough and claim their wages through the scheme.</p> <p>It would seem logical that this only applies to individuals who were made redundant or stopped working as a result of the coronavirus outbreak, and not for any other reason. However, the guidance does not expressly include such a requirement. It is not clear whether any statutory (and contractually enhanced if applicable) redundancy payments or other termination payments will need to be repaid as a condition of the employee being re-hired and placed on furlough.</p>	<p>Employees who were not on PAYE payroll on 19 March 2020 and who were not notified to HMRC on an RTI submission prior to that date (subject to some people who may have been re-hired). Those employees are to be signposted to other benefits.</p>

<p>Employees who started unpaid leave after 28 February 2020 can be put on furlough instead. They should then be paid at least 80% of their regular wages, up to the monthly cap of £2,500. Although the guidance is not clear on this, it is logical that this only applies to individuals who were put on unpaid leave as a result of the coronavirus outbreak, and not for any other reason.</p>	<p>Employees who started unpaid leave on or before 28 February 2020 cannot be furloughed until the date on which it was agreed they would return from unpaid leave.</p>
<p>The guidance states that employees on sick leave or self-isolating in line with Government guidance will be able to get SSP (subject to other eligibility conditions). Short-term illness or self-isolation should not be a consideration in deciding whether to furlough an employee, however if an employer wants to furlough an employee for business reasons and they are currently off sick, they can do so. In that case, SSP should cease and the employee would be classed as furloughed according to the latest guidance.</p> <p>The guidance also states that employers can decide whether to furlough employees who are shielding or on long-term sick leave. Claims can be made under both the furlough scheme and the separate SSP rebate scheme (under which 2 weeks' SSP per employee can be claimed back) for the same employee, but not for the same period of time.</p> <p>According to the guidance, if an employee becomes sick whilst furloughed, it is up to the employer to decide whether to move them to SSP or keep them on furlough at their furloughed rate. If the employee is moved to SSP, employers can no longer claim for the furloughed salary but may qualify for the separate rebate of up to 2 weeks SSP. If they remain furloughed, employers will remain eligible for salary costs under the furlough scheme.</p> <p>However, the Treasury Direction suggests that where the employer gives the instruction to cease work at a time when SSP is payable or liable to be payable to the employee, the period of furlough cannot commence until the actual or deemed period of SSP has ended. That is so irrespective of whether the employer has claimed SSP. It therefore remains unclear whether an employee who is</p>	<p>Employees who are working on reduced hours or for reduced pay. Practically, an employer who has already introduced short-time working may wish to bring that arrangement to an end and seek to furlough a proportion of the workforce instead, thereby bringing them within the ambit of the scheme.</p>

currently off sick and receiving or eligible for SSP can be put on furlough.	
Employees who are shielding (or are required to stay at home because a person in their household is shielding) in line with public health guidance can be placed on furlough. Previous versions of the guidance contained the condition that such individuals would otherwise be made redundant, however this stipulation has been removed.	
Employees who are unable to work because they have caring responsibilities resulting from coronavirus can be furloughed. There does not appear to be any additional requirement for a business case for redundancy for this category.	
<p>Employees on maternity, paternity, adoption or shared parental leave will receive the normal statutory payments if eligible, and will not ordinarily be eligible for furlough during the period of such payments. However, if they also have an enhanced contractual entitlement, they can be furloughed and the employer can claim the enhancement back under the scheme.</p> <p>Claims under the scheme for employees furloughed on return from such statutory leave should be calculated on their normal gross salary, not the pay they received whilst on statutory leave.</p>	
Foreign nationals working in the UK on all categories of visas can be included (grants under the scheme are not counted as "access to public funds" which is generally prohibited for such individuals).	
Employees who TUPE to a new employer after 19 March 2020 can be furloughed and claimed for under the scheme.	
Employees on fixed term contracts can be furloughed; their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme.	
<p>In addition to employees, the following can be furloughed, provided they are paid via PAYE:</p> <ul style="list-style-type: none"> <li>• office holders (including company</li> </ul>	

<p>directors and salaried individuals who are directors of their own personal service company);</p> <ul style="list-style-type: none"> <li>• salaried members of limited liability partnerships;</li> <li>• agency workers; and</li> <li>• "limb (b) workers".</li> </ul> <p>Agency workers will need to be furloughed by the agency (or umbrella company) they are engaged by, but the guidance suggests that it would be advisable for the agency to discuss the need to furlough with any end clients involved.</p> <p>Apprentices can also be furloughed and can continue to train whilst furloughed, subject to meeting appropriate minimum wage requirements.</p>	
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### 3. What costs will be recoverable?

- Employers can claim the lower of 80% of a furloughed employee's gross regular wage, or £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions (i.e. 3%) on that subsidised wage.

For full-time and part-time salaried employees	For employees whose pay varies
<p>The employee's actual salary before tax in their last pay period prior to 19 March 2020 should be used to calculate the 80%.</p> <p>This suggests that any subsequent pay rises, including the increases to National Minimum Wage from 1 April 2020, do not need to be included in the calculation.</p> <p>However, if an employer has already calculated their first claim based on the employee's salary as at 28 February 2020 based on the advice in previous versions of the guidance, and this differs from the salary in the last pay period prior to 19 March 2020, they can choose to still use that calculation for their first claim.</p>	<p>If the employee has been employed for a full twelve months prior to the claim, the employer can claim for the higher of either:</p> <ul style="list-style-type: none"> <li>• the same month's earning from the previous year; or</li> <li>• average monthly earnings from the 2019-20 tax year</li> </ul> <p>If the employee has been employed for less than a year, the employer can claim for an average of their monthly earnings since they started work until the date they are furloughed. If the employee has been employed for less than a month, a pro-rata for their earnings so far can be used to claim.</p>

- The guidance clarifies that any "regular payments" that an employer is obliged to pay employees can also be claimed, including wages, past overtime, fees and compulsory commission payments. This appears to apply to both salaried workers and those who have variable pay.
- The following costs are **not** recoverable under the scheme: payments that are conditional, discretionary bonuses (including tips), discretionary commission payments, non-cash payments, benefits in kind, and benefits provided through salary sacrifice schemes (including pension contributions). Where the employer provides such benefits to furloughed employees, these should be in addition to the wages that are recoverable under the terms of the scheme.
- The guidance clarifies that employees are only entitled to the national minimum wage, national living wage or apprentice minimum wage for the hours they are working. Therefore furloughed workers, who are not working, can be paid the lower of 80% of their salary or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum wage. However, any time that is spent undertaking training should be paid at the appropriate minimum rate (taking into account the increase in minimum wage rates from 1 April 2020). Clearly caution should be exercised so that training doesn't become seen as work.
- Claims should be made using the amounts in the payroll either "shortly before or during running payroll". If appropriate, workers' wages should be reduced to 80% of their salary within the payroll before they are paid, as the adjustment will not be made by HMRC.
- Once the employer has worked out how much of an employee's salary they can claim for, they must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions they are entitled to claim. Guidance on how these should be calculated and working examples can be found here: <https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme> and the Treasury Direction also contains the relevant rules, which can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/879484/200414\\_CJRS\\_DIRECTION\\_-\\_33\\_FINAL\\_Signed.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION_-_33_FINAL_Signed.pdf).
- Employees will still pay taxes in the usual way out of the wages they receive (including employee automatic pension contributions).
- Guidance now confirms that holiday can be taken while an employee is on furlough leave, but that it must be paid in line with the usual rules in the Working Time Regulations – as such, even if you have agreed to reduce wages during the furlough period, any days taken as holidays must be paid at the employee's usual rate of pay. This means that employers would need to "top-up" any holiday days but would not be able to claim the amount topped-up through the scheme. However, it should be noted that the government has reserved the right to amend its position in respect of holiday pay and furlough due to the unprecedented situation.

#### 4. What evidence/information will be required?

- The guidance states that in order to claim, employers will need:
  - their employer PAYE scheme reference number;
  - the number of employees being furloughed;
  - the dates the employees have been furloughed to and from;
  - National Insurance Numbers for the furloughed employees;
  - names of the furloughed employees;
  - payroll / employee numbers for the furloughed employees (optional);
  - their Self Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number;
  - the claim period (start and end date);

- amount claimed (per the minimum length of furloughing of 3 consecutive weeks);
  - their registered name and address;
  - their bank account number and sort code;
  - their contact name; and
  - their phone number.
- They will also need to calculate the amount they are claiming (see above "*What costs will be recoverable?*").
- If an employer has fewer than 100 furloughed staff, they will be asked to enter details of each employee they are claiming for directly into the system - this will include their name, National Insurance number, claim period and claim amount, and payroll/employee number (optional).
- If an employer has 100 or more furloughed staff, they will be asked to upload a file with the information rather than input it directly into the system. HMRC will accept the following file types: .xls .xlsx .csv .ods
- The file should include the following information for each furloughed employee: name, National Insurance number, claim period and claim amount, payroll/employee number (optional).
- Employers will need to have all of this information ready before starting to make the claim under the portal, as the session will time-out after 30 minutes and cannot be saved.
- Once employers have submitted the claim, a claim reference number will be provided which must be noted or print-screened (as it will not be subsequently provided to you in an email confirmation).

## 5. Other relevant information about the claim

- Employers cannot make more than one claim in respect of a "claim period". The guidance does not offer clarity as to what intervals employers should claim in, save to say that employers should make their claim shortly before or during running payroll and that they must claim for all employees in each period at one time, as changes cannot be made to the claim. As such, it seems that employers who run a monthly payroll on the last day of the month should submit their claim either on or shortly before the last day of the month. [
- Employers should retain all records and calculations in respect of their claims, including records of the amount claimed for each furloughed employee and the period for which each employee is furloughed, for at least five years.
- HMRC cannot provide employees with details of claims made by employers on their behalf, therefore employees should be kept informed and asked not to contact HMRC.
- Where an agent is authorised to act for an employer for PAYE purposes, the agent will be able to make a claim on the employer's behalf. The employer will need to tell the agent which bank account they would like the grant to be paid into. Where an employer uses a file only agent (who files their RTI return but doesn't act on any other matters) the file only agent won't be authorised to make a claim for the employer and the employer will need to make the claim themselves.
- To be eligible for the grant under the scheme, employers must confirm in writing to their employees that they have been furloughed, and the guidance states that a record of this communication must be kept for 5 years. However, please note the requirement for the employee and employer to agree to the furlough and cessation of all work in writing as set out under heading 1 above – this evidence should also be kept for the same period.
- HMRC will check the claim and pay the grant via BACS payment into a UK bank account if the employer is eligible.
- The employer must pay the employee all the grant it receives for their gross pay, no fees can be charged from the money that is granted. Furloughed staff must receive no less than 80% of their reference pay (up to the monthly cap of £2,500).
- Payments received by a business under the scheme must be included as income in the

business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

## 6. How to mitigate against the risk of a claim being denied (or deemed to be "fraudulent or erroneous")?

- It seems unlikely that HMRC will be able to undertake a forensic analysis of the circumstances of each employee placed on furlough, however there are suggestions that the initial claim will undergo some element of checking for fraud before it is paid.
- HMRC can ask employers to provide any such information as it may require at any time (whether before or after payment of the claim) to establish entitlement to payment under the scheme.
- The Government has indicated there will be certain safeguards, including a whistleblowing hotline for employees if they are being made to work during furlough. In such instances, claims would not be paid. The employees' guidance expressly encourages employees to report their employers if they suspect they are abusing the scheme.
- Further, the Government can retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims. Unofficial reports suggest that they could do this for up to five years. This suggests that the Government does intend to undertake some form of checks made by at least some employers, which could result in repayment on the basis of fraud or error. Fraudulent claims may carry criminal sanctions depending on their severity, according to unofficial reports.
- Although there is currently no guidance on this and no mention of a financial means test, in order to verify that claims have not been made fraudulently or erroneously, the Government may request evidence that a particular business has been adversely affected by the coronavirus outbreak, that it has faced a reduction in demand and therefore work, that some of its employees have been unable to work because of matters associated with the coronavirus outbreak (such as those who are shielding, living with someone shielding or those who have caring responsibilities) if applicable, and/or that its ability to continue meeting salary costs has been compromised.
- Employers therefore ought to keep written records of the following to be prepared in the event that their claim is selected for further scrutiny by the Government, and start collating such evidence now:
  - Evidence that their business, or part of their business, had to close due to the pandemic;
  - Their financial situation for the period preceding and during any period of furlough leave, and evidence that any downturn in finances is linked to the coronavirus outbreak;
  - The business case for furloughing (such as a downturn in the work/particular types of work undertaken by the employer);
  - If applicable, evidence that certain staff were unable to work due to shielding, living with someone who is shielding or due to caring responsibilities;
  - The criteria applied to the selection of particular individuals for furlough;
  - The criteria applied in determining the length of any period of furlough; and
  - Details of how they have calculated each claim made under the scheme.

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