

Key features of the Coronavirus Job Retention Scheme
As at 15 April 2020

- Open to all UK employers who had operated a PAYE scheme at 19 March 2020 (original guidance from HMRC gave a date of 28 February), and have enrolled for HMRC's PAYE online services.
- **The employer can claim a grant from HMRC to reimburse staff costs of workers who are "furloughed" (give a temporary leave of absence to).**
- **The grant will be equal to 80% of salary (to a maximum of £2,500) plus employer National Insurance and minimum auto enrolment pension contributions on that subsidised amount.**
- The calculation will be principally based on the basic salary in the last pay period prior to 19 March 2020 (see further information). **Any dividend income would also be excluded, as too are the value of any benefits in kind.**
- The employer may, if they wish, make up the difference, up to the normal salary.
- Employees, directors and certain other workers (see further information) on PAYE payroll, and included on an RTI submission to HMRC, on or before 19 March 2020 can be eligible under the scheme. All reference here is to all relevant individuals.
- Claims can be back dated to 1 March 2020, where employees have been made redundant or left on their own accord after that date, and then are rehired (on or before 19 March 2020) and subsequently placed on furlough (but care must be taken on backdated claims, and employment law implications must be considered, such as negotiating new contract terms). Otherwise, claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, or when they written to confirming their furloughed status.
- Special rules apply for employees whose pay varies (see further information).
- Special rules also apply for individuals on maternity leave, contractual adoption pay, paternity pay or shared parental pay (see further information).
- Employees on sick leave or self-isolating should get statutory sick pay, but can be furloughed after this. Employees unable to work due to caring responsibilities resulting from coronavirus can be furloughed.
- **The scheme runs with effect from 1 March, for an initial 3-month basis (from that point) but may be extended.**

- Employees cannot do any work that makes revenues or provides services for their employer during the time they are furloughed. They may though, if contractually allowed, work for another employer.
- The scheme does not apply to employees who are to work reduced hours.
- Employees who are furloughed will be permitted to study or to do volunteer work, provided it does not generate revenue or provides services for their employer. If a furloughed employee undertakes training at the request of their employer, they must be paid at least the national minimum wage for those hours.
- A director whose employment services are furloughed may continue in their statutory duties as a director (such as record keeping, preparing VAT returns and annual accounts). This could be evidenced by 2 contracts – a service contract and an employment contract. The furloughing should be formally adopted as a decision of the company’s board of directors, noted in the company records and communicated in writing to the director(s) concerned. HMRC may require evidence of this.
- Individuals must be under the scheme for a minimum of three consecutive weeks at a time. A furloughed employee can return to work and then be put on furlough leave again later. Grants will be prorated for employees furloughed only for part of a pay period.
- When the scheme ends, an employer can decide whether employees can return to their duties or to consider termination of employment (redundancy).
- The employer must write to employees confirming that they have been furloughed and they must keep a record of this communication for 5 years.
- The employer will continue to pay employees via payroll/RTI, with appropriate deductions for PAYE tax, national insurance and pension contributions.
- Payments received by a business under the scheme will form part of its receipts in calculating its taxable profit.
- **HMRC will launch the online portal, under which claims can be made, on 20 April. Claims should be paid within 6 working days.**
- Businesses themselves, and authorised agents (with a form 64-8 in place for PAYE matters), will be able to make the claim. “File only agents”, including Payroll Bureaus, whose only responsibility is to file the RTI return, will not be able to access the service, due to data protection reasons.
- HMRC will check claims for eligibility and will retain the right to retrospectively audit all aspects of claims made.

Coronavirus Job Retention Scheme – Application Checklist

To make the claim, the following information will be required (unless already held in tax and payroll records):

- ePAYE reference number.
- Unique Tax Reference number or Company Registration Number.
- Bank account number and sort code (this must be a UK account).
- Contact name and phone number.
- For each furloughed employee:
 - Name
 - National Insurance number
 - Claim period and claim amount
 - Salary, national insurance and pension contribution information
 - PAYE/employee number (optional)
- The total amount being claimed for all employees and the total furlough period.

FSPG, as agents, can make the claim on your behalf, if there is formal authority in place with HMRC.

Otherwise you will need a Government Gateway ID and password (if you don't already have an account, you can apply online [here](#)) and be enrolled for PAYE online (if you aren't registered, you can apply [here](#)).

If there are fewer than 100 furloughed staff, then the information for each employee will be input directly into the system; otherwise the information must be uploaded in a file (in .xls .xlsx .csv .ods. format)

Coronavirus Job Retention Scheme – Further Information

The following can also be furloughed under the scheme:

- Office holders (including company directors), who are remunerated under PAYE. The furlough, and any ongoing payment, would need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.
- Salaried members of Limited Liability Partnerships (LLPs). The reference salary would be the member's profit allocation, excluding any amounts determined by their own or the LLP's overall performance. The terms of any LLP agreement may need to be varied by a formal decision of the LLP.
- Agency workers (including those employed by umbrella companies), who are paid through PAYE. Furlough should be agreed between the agency (as the deemed employer) or the umbrella company, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. No work should be performed for, through or on behalf of the agency, while they are furloughed, including for the agency's clients.
- Limb (b) workers (a "dependent contractor", who provides a service as part of someone else's business), if they are paid through PAYE. Those who pay tax on their trading profits may instead be eligible for the [Self-Employed Income Support Scheme](#).
- Employees of a company in administration, if there is a reasonable likelihood of rehiring the workers – for instance, if the intention is to sell the business.
- The Cabinet Office has issued [guidance](#) on how payments to suppliers of contingent workers should be dealt with where the party receiving the contingent worker's services is a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body. This applies to agency workers paid through PAYE, those paid through umbrella companies on PAYE and off-payroll workers supplying their services through a Personal Service Company (PSC).

Other situations:

- The reference salary includes any regular payments which an employer is obliged to pay, including wages, past overtime and compulsory commission, and excluding discretionary bonus/commission payments and non-cash payments ("benefits in kind", even if provided through salary sacrifice). Where there are benefits provided through salary sacrifice, the coronavirus will count as a "life event" that could warrant changes to such arrangements, if the relevant employment contract is updated accordingly.
- Whilst the calculation will be principally based on the basic salary in the last pay period prior to 19 March 2020, it is permissible to base a first claim on an employee's salary as at 28 February 2020 (based on previous HMRC guidance), if that salary differs from the last pay period prior to 19 March.

- Where the pay of an employee varies: If they have been employed for 12 months or more, each claim for a pay period will be based on the higher of the same month's earning from the previous year and the average monthly earnings for the 2019-2020 tax year. If they have been employed for less than 12 months, the claim will be based on 80% of their average monthly earnings since they started work (subject to the £2,500 cap).
- An employee on a fixed term contract can have their contract renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed, it will no longer be possible to claim grant for them.
- If an employee is on maternity leave, adoption leave, paternity leave or shared parental leave, a claim can be made through the scheme for enhanced (earnings related) contractual pay for employees who qualify for either maternity pay, adoption pay, paternity pay or shared parental pay.
- Individuals are only entitled to the National Living Wage, National Minimum Wage or Apprentices Minimum Wage for the hours they are working or treated as working under minimum wage rules. However, time spent training is treated as working time for the purposes of the minimum wage calculations and must be paid at the appropriate minimum wage. Where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages.
- Apprenticeship Levy and Student Loans should both continue to be paid as usual, as grants do not cover these.

Normal employment law considerations still apply.

- **The employer cannot unilaterally place an employee on furlough, unless that is permitted under their employment contract. Neither can the employer unilaterally reduce an employee's salary. Unless the contract has specific provisions which allows the employer not to pay employees if there is no work, employees remain entitled to receive what is specified in their employment contract. In those cases, employees would need to consent to being put on furlough.**
- **Employers would need to make any changes to the employment contract by agreement, if necessary. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.**
- **Employees will still have the same rights at work, including Statutory Sick Pay, maternity and other parental rights, rights against unfair dismissal and redundancy payments.**
- **It is suggested that employers seek legal advice on the process, where necessary.**