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Coronavirus Job Retention Scheme

The Scheme is described as 'designed to support employers whose operations have been severely affected by coronavirus', however any UK organisation that **operated, registered a payroll and made an RTI submission before 19 March** and has a UK bank account may apply. **This includes individuals, such as private households employing a nanny.**

The Scheme pays a taxable grant to employers to assist with the cost of employing underutilised individuals.

We have responded to the frequently asked questions below to help businesses make decisions at this critical time. This document will be continually updated as the mechanics of the scheme become clearer.

Accessing the Scheme may require alteration of the terms in employment contracts and we strongly recommend that legal advice is obtained before any action is taken.

Government guidance for employers can be accessed [here](#), and guidance for [employees](#) has also been provided.

I. What is Furloughing?

The guidance describes a 'furloughed employee' as one who has been kept on the payroll but asked to stop working.

There is no statutory right for employers to impose furlough under UK law so the arrangement can only be made by agreement or if the relevant employment contract contains these provisions. This is quite rare.

A furloughed employee will be entitled to their wages under their employment contract, subject to any agreed variation. The wages will be reported under the Real Time Information PAYE scheme as usual, subject to the usual Income Tax, National Insurance and other deductions. Employees must also pay auto enrolment pension contributions on their earnings in the usual way during furlough, unless they have opted out.

Employers will be liable to National Insurance contributions and mandatory or contractual pension contributions on the earnings during the furlough period.

As the grant is capped at 80% of gross wages, in order for the employer to be fully compensated, they will need to agree a reduction in salary with their employee(s).

2. What employers does the scheme apply to?

All UK employers with a PAYE scheme including businesses, Local Authorities and charities.

Where a company has been transferred to an administrator, the administrator will be able to access the Scheme.

There is no requirement to place all employees on furlough to access the Scheme.

A new employer is able to claim under the scheme in respect of the employees of a previous business that have been transferred after 19 March 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

3. What employees does it apply to?

Employees on the payroll at 19 March 2020 for whom a payroll Real Time Information (RTI) submission has been made prior to 19 March 2020, who would otherwise have been “laid-off”. Employees who have not been paid under PAYE before 19 March cannot qualify for the Scheme.

This includes both full and part-time employees plus those on zero hours and temporary contracts, however not contractors who operate outside of the PAYE system. Company directors are included in the scheme as are salaried members of LLPs although additional guidance applies, see 3a.

Employees who have had their employment terminated since 28 February can be reemployed and then furloughed to take advantage of the Scheme provided their pay was the subject of an RTI PAYE submission prior to 28 February. The grant paid to the employer will be backdated to apply to their salary costs from 1 March.

Employees on unpaid leave cannot be furloughed unless their unpaid leave commenced after 28 February.

Employees on sick leave (including those self isolating and unable to work from home) may be furloughed following their return to work. Employees on the Government’s vulnerable list that are shielding for their own protection may be placed on furlough.

No guidance has yet been issued on what evidence will be required that an individual concerned would otherwise have been “laid-off”.

Employees with caring responsibilities, for example needing to look after children, may be placed on furlough.

Employees on a fixed term contract may be furloughed and their contract renewed or extended without breaking the terms of the scheme.

3a. Directors and salaried members of LLPs

As office holders, salaried company directors may be furloughed under the scheme. The decision to furlough a director should be taken by the board of directors, noted in the company records and communicated to the director concerned.

Whilst furloughed a director may continue to carry out their statutory duties to the company but must do “no more than would reasonably be judged necessary for that purpose” and in particular must do nothing to generate commercial revenue or provide services to or on behalf of their company.

Members of an LLP that are deemed to be employees for tax purposes (salaried members) may be furloughed under the scheme. In order to furlough a member the LLP agreement might need to be varied by a formal decision of the LLP. The reference salary for the member is the members profit allocation excluding any element which is determined by the LLP member’s performance or the performance of the LLP as a whole.

4. How do I designate my employees as furloughed?

This is a matter of employment law, which will require advice, however it is understood that the employer may need to obtain consent from the affected individuals to an amendment to their employment contracts. Certainly the employer will need to write to the affected individuals to confirm that they have been furloughed and keep a record of this communication. The scheme rules state that a record of this communication must be retained for 5 years.

The detailed regulations published on 15 April include the requirement that “the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment”. Written correspondence between employer and employee should be reviewed to ensure that it meets this criteria.

An employee must be furloughed for a minimum of three weeks to qualify and currently the maximum time for the claim is three months with effect from 1 March 2020.

5. What does the grant cover?

The figure of £2,500 is a maximum monthly grant per employee exclusive of employer’s National Insurance and pension contributions. The grant is limited to 80% of the individual’s gross regular monthly wage if this is lower than £2,500. The reference pay for the grant for employees on a salary is the amount in their last pay period prior to 19 March.

The reference gross regular monthly wage includes past overtime, fees and compulsory commission payments but excludes discretionary bonuses and commissions, non monetary benefits (including taxable Benefits-in-Kind) and non cash payments.

All the grant received to cover an employee’s net pay must be paid to them, no amount may be deducted to cover administration, the cost of benefits or a salary sacrifice scheme.

Employers will also be able to claim for the cost of employer’s National Insurance and minimum auto enrolment pension contributions. Therefore the maximum monthly claim per

employee is £2,804 (gross wages of £2,500, £245 employer's NIC and £59 employer mandatory pension contribution).

Grants will be pro-rated if an employee is only furloughed for part of a pay period. Claims start from the date the employee finishes work and starts furlough, not the date when the decision was made or when they were written to, to confirm furlough status.

6. How will this work in practice?

A simple scenario will work as follows:

	£
Gross annual salary	24,000
Gross monthly salary	2,000
Net monthly salary	1,665
Monthly employer's NI	177
Monthly employer's pension contribution (opted out)	-

The maximum monthly grant to the employer is the lower of:

- (a) £2,500 and
- (b) 80% of £2,000 (£1,600)

plus employer's National Insurance Contributions on the lower figure (£122), so £1,722.

If the employer continues to ensure that the employee gets full pay it will cost £455 (£2,177 less £1,722).

To reduce the cost of employing the individual to £1,722 would require a change to the employment contract, with employee consent.

Where the employee earns more than £2,500 per month it will work as follows:

	£
Gross annual salary	42,000
Gross monthly salary	3,500
Net monthly salary	2,675
Monthly employer's NI	383
Monthly employer's pension contribution (opted out)	-

The maximum monthly grant to the employer is the lower of:

- (a) £2,500 and
- (b) 80% of £3,500 (£2,800)

plus employer's National Insurance Contributions on the lower figure (£245), so £2,745.

If the employer continues to ensure that the employee gets full pay it will cost £1,138 (£3,883 less £2,745).

To reduce the cost of employing the individual to £2,745 would require a change to the employment contract, with consent.

7. What about employees on variable pay?

When the employee has been employed for more than 12 months prior to the claim by the employer, the employer can base the claim on the greater of either the same month's earnings for the previous year or average monthly earnings for the 2019-20 year.

When an employee has been employed for less than a year the employer should base the claim on an average of their monthly earnings since they started work.

8. What are the implications for owner managed businesses that pay regular dividends?

The grant will be based only on the amount declared as a salary via PAYE. Dividends are outside the Scheme and not subject to reimbursement.

9. How do employers make a claim?

More detailed information is available on Chavereys' document "Making a Furlough grant claim".

An employer can make a maximum of one claim every three weeks. A claim should be made via an online portal which will be created for this purpose and **will be open to claims from 20 April**. Employers will be expected to calculate the value of their claim and H M Revenue & Customs will reserve the right to check the calculations and all other aspects of the claim.

In order to make a claim, employers will need the following information:

- The employer PAYE reference number
- The Self-Assessment Unique Taxpayer Reference (UTR), Company UTR or Company Registration Number
- The name, employee number and National Insurance Number for each furloughed employee
- The total amount being claimed for all employees and the start and end date of the furlough period for that claim (minimum length 3 consecutive weeks)
- The bank account number and sort code for the grant to be paid to
- The name and contact telephone number for the individual within the organisation that H M Revenue & Customs should contact with any query about the claim

This information should be retained for a period of five years, given the ability of H M Revenue & Customs to audit the scheme.

An agent who is authorised to act for PAYE purposes will be able to make a claim on the employer's behalf. A "file-only" agent who makes PAYE RTI submissions but is not otherwise authorised to act for you will not be able to make the claim on your behalf.

10. How and when will the grant be paid?

H M Revenue & Customs will process the application and make a direct payment to the employer's bank account **within 6 working days**.

11. Do businesses need to top up the employees' wages to 100%?

No, although employers can if they wish to. Any voluntary employer's pension contributions above the mandatory minimum will not be reimbursed.

The recommendation is that all employees within the business are treated the same way.

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. If a furloughed worker being paid 80% or their salary takes them below the appropriate minimum wage this is not a problem provided they are not working.

12. What can an employee do whilst furloughed?

They are unable to carry out any work for the employer during the furlough period other than the statutory duties of directors, where relevant.

Employees who are working, but on reduced hours and/or reduced wages, are not eligible for the Scheme.

Subject to the terms of the employment contract, the individual may be able to obtain paid work elsewhere. If they already have a second employment with an unrelated employer this second employment will be unaffected.

A furloughed employee may undertake voluntary work; they may also undertake voluntary training provided it does not generate revenue for the employer. If an employer requires an employee to undertake training whilst on furlough they should pay the employee at least minimum wage for this time which may be more than the 80% contribution.

13. Can an employee be furloughed, moved back into service and then re-furloughed at a later date?

Yes. A minimum furlough period of three weeks applies before the individual can return to work, however a further period of furlough can follow either immediately after the first, or after a period of further service, while the scheme remains open.

14. How does the furlough affect holiday entitlement?

The employment contract continues for all other purposes so benefits such as sick pay and holiday entitlement continue to accrue.

15. What happens if my employees do not consent?

The employees does not have to accept the terms of the furlough, however this may give the employer no alternative but to consider other options such as:

- Temporary reduction in hours, pay or both, by agreement with the employee, however no claim for the government grant can then be made as the employee is still working
- Requiring employees to take paid holiday out of their annual entitlement if so provided in the employment contract
- Redundancy consultation under the usual employment law procedure.

16. What is the tax treatment of the grant for the employer?

The grant is taxable income, which will be offset by the cost of wages paid to the employee.

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