

CORONAVIRUS EMPLOYMENT SCHEMES

June 2020



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BACKGROUND

What does “furlough” mean?

On 20 March 2020, the UK Government announced the introduction of the **Coronavirus Job Retention Scheme** to support employers through the financial impact of **COVID-19**.

As part of the scheme the Government announced that employers would get support for employees whom they put on furlough due to disruption to their businesses caused by the coronavirus outbreak. On 29 May, the scheme was extended until October 2020.

On 26 March, the UK Government announced the introduction of the Coronavirus Self Employment Income Support Scheme (SEISS) to support self-employed workers.

This guidance note was produced by the **Association for Consultancy and Engineering (ACE)** for the **Construction Leadership Council (CLC)**. It is freely available to download from [ACE's website](#).

All information contained within this document is believed to be correct as of 16 June 2020 when this guidance was updated with additional FAQs.

Please note this this guidance note supersedes previously released guidance.

CORONAVIRUS JOB RETENTION SCHEME

The scheme only applies to staff on an employer's PAYE system, so will not cover self employed staff. Under the scheme, employers will need to:

- Assess their workforce and designate them into two groups. Those who will continue to work and those affected employees who will no longer work - and designated as “furloughed workers”; and notify employees of this.
- Submit information to HMRC online about employees that have been “furloughed” and their earnings.

All employers with a PAYE scheme that was set up on or before 19 March 2020 will be eligible to apply under the scheme. It was initially announced that it would open for three months, but the Government has since extended the scheme until 31 October 2020. The scheme will be able to cover the cost of wages backdated to 1 March 2020 and employers will use an online portal to apply to the scheme. The scheme will close to ‘new’ applicants from 30 June 2020.

Additional information and official guidance for employers on the Coronavirus Job Retention Scheme [can be found at gov.uk](#).

What does “furlough” mean?

Furlough is when employees are on temporary leave or a leave of absence. It is generally implemented by employers as a cost-saving measure during tough economic times or otherwise slow periods. In the US, where it is more commonly used, it operates to force employees to be temporarily absent from work as an alternative to redundancy, so that they can readily return in due course.

Key issues

Some of the key issues that employers will need to consider are:

1. The Government has made it clear that designating an employee as a “furloughed worker” remains subject to existing employment law and dependent on the wording of individual employment contracts. Therefore, it would seem that it cannot be imposed on employees and they would need to be in agreement to be furloughed.

This means the scheme does not give employers an automatic right to stop their employees from working and to expect the Government to pick up the salary costs. However, if employees do not agree to be furloughed, employers can dismiss by reason of redundancy if definitions are met and a proper process followed.

2. The scheme applies only to employees who can no longer work or those who would otherwise have been laid off during this crisis. In instances where an employee could be redeployed/moved to carry on other duties within the business, it will not apply.
3. In instances where employers have already commenced redundancy processes, the question remains whether they should delay those processes while the scheme is running. The Government has made it clear that its aim is to prevent mass redundancies. It would therefore appear risky to continue with redundancy processes while the scheme is operating.

Employers should consider discussing the scheme with ‘at risk’ employees as part of the consultation process and agree to either carry on with the redundancy process (recognising the risks associated with it) or agree to use the scheme as an alternative.

4. Some employers may have already introduced policies such as reduced hours or short-time working linked to the COVID-19 crisis. These employers may need to consider whether they can renegotiate with employees and potentially agree new terms making use of the scheme.
5. It would appear that an employee is not restricted from taking on other work or working for multiple employers while under the scheme. Current guidance states that if an employee has more than one employer they can be furloughed for each job as each job is separate the cap applies to each employer individually.

If an employee has had multiple employers over the past year, but has only worked for one of them at any one time, and the employee is being furloughed by their current employer, then the employee cannot be furloughed by their previous employer.

WHEN SHOULD I USE THE SCHEME?

Are your employees either:

- unable to access and work safely on site as per the CLC SOP or
- unable to carry out their day job at their usual workplace e.g. such as they are canteen staff working in an office and you cannot cover their costs?

Yes

Consider furloughing them.

No

Do you have a shortfall in workload which means you are considering making some of your staff redundant for business reasons?

Yes

Identify the number and type of positions at risk.

No

Do not furlough.

Do you undertake critical work in accordance with the critical work functions list which you need to retain or staff who have been designated as Key Workers by clients?

FAQs

Q: Which employees can be furloughed under the Coronavirus Job Retention Scheme?

A: The scheme covers employees on any type of contract, who were on their employers' payroll on or before 19 March 2020. In order to qualify HMRC will need to have been notified via a RTI submission on or before that date.

It includes full-time and part-time employees, employees on flexible or zero contracts and on agency contracts.

The scheme also covers employees who have been that were made redundant since 28 February 2020, if they are rehired by their or who stopped working for the employer after that date and before 19 March 2020 but were subsequently rehired. This applies as long as the employee was on the payroll as of 28 February 2020 and HMRC were notified via a RTI submission on or before that date.

The updated guidance of 4 April further clarified that a wide range of individuals, including some who do not necessarily have employee status in employment law, can be furloughed. The criteria is that they must have been paid via the employer's PAYE payroll on 28 February or before 19 March 2020 but could include:

- Apprentices
- Agency and casual workers and holders of non-UK passports working for UK employers.
- Salaried members of LLPs who are classed as employees for tax purposes.
- Nannies.

In addition Company Directors can also be furloughed by the Board. The furloughed director can still perform their statutory duties but must not do any revenue generating work for the company.

Q: Can employees work for the employer when furloughed?

A: To qualify for the scheme, employees must not undertake work for the employer while furloughed. Wages of employees working a reduced schedule due to the pandemic are not covered.

The employee must not work for the employer at all during the furlough period. A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

On 29 May 2020, the Government announced changes to the scheme termed "flexible furlough" allowing businesses to bring furloughed employees back part-time from 1 July, however employers will have to pay the wages for the time they are in work.

Q: Can employees undertake training when furloughed?

A: The employee must not work for the employer at all during the furlough period. A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Q: Is the amount an employer pays net or gross up to £2,500?

A: HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage. The employee's wage will be subject to usual income tax and other deductions. From July to October, there will be a sliding scale of grant payments to businesses as outlined below.

Q: How does an employer work out how much grant they will receive?

A: For full time and part time salaried employees, the employee's actual salary before tax, as of 19 March 2020 should be used to calculate the 80%. Fees, commission and bonuses should not be included.

For employees whose pay varies, the following applies:

- If the employee has been employed for a full twelve months prior to the claim, you can claim for the higher of either: the same month's earning from the previous year or average monthly earnings from the 2019-20 tax year.
- If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.
- If the employee only started in February 2020, use a pro-rata for their earnings so far to claim. From July to October, there will be a sliding scale of grant payments to businesses as outlined below.

Q: What should an employer do about pension contributions for a furloughed worker - do these stop?

A: HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage. From July to October, there will be a sliding scale of grant payments to businesses as outlined below.

Q: Can employers be selective to which members of staff receive a salary top-up?

A: The Government has confirmed that employers may choose to top up employees' salaries if they wish. A consistent approach to paying top up to staff is recommended however in order to avoid claims of unfair treatment - for example treating employees differently because of their gender, age, disability or other protected characteristics.

Due to the fact that many employers will have greatly reduced income over the coming months, with no clarity as to when the crisis will end, it may be prudent to include a right to amend or to choose not to top-up in later months, should circumstances dictate.

Q: Does a contractor qualify for the Job Retention Scheme if the industry is being told to continue working?

A: The Coronavirus Job Retention Scheme has been introduced to support businesses and to prevent redundancies from the impact of COVID-19. Despite the industry being advised to continue working where possible in line with the CLC Site Operating Procedures if individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work.

Q: Will a contractor only qualify once work has to cease because of supply shortages or the business runs into financial difficulties because clients withhold payment?

A: The scheme is intended to support employers who cannot cover staff costs due to COVID-19, in order to avoid redundancies. If individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work. It is not clear in the guidance but HMRC may in future require evidence of revenue shortfall.

Current guidance states that all UK businesses are eligible as long as they:

- Designate affected employees as 'furloughed workers'.
- Notify those employees of this change – changing the status of employees is subject to existing employment law and employment contracts.

Q: What happens to employees that are off sick?

A: Employees on sick leave or self-isolating should get Statutory Sick Pay or Contractual Pay depending on the terms of their contract but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough.

Q: When will companies receive the money?

A: HMRC's online portal opened on 20 April, with the first grants paid within weeks and backdated to the start of the furlough period.

Q: Can employees take holidays if they are furloughed?

A: The Government has made it clear that designating an employee as a "furloughed worker" remains subject to existing employment law and individual contracts which means that they will continue to accrue annual leave during the furloughed period, in-line with their contract.

Employees could be encouraged to continue to take annual leave whilst working from home if necessary for health and safety arguments for having periods of rest from work. However, the introduction of The Working Time (Coronavirus) (Amendment) Regulations 2020, which allows for carry over of annual leave, would suggest that it would be difficult to force an employee to take annual leave.

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Q: What amendments have been introduced by The Working Time (Coronavirus) (Amendment) Regulations 2020?

A: In order to regulate what are extremely difficult working times, several new employment regulations related to coronavirus have been rapidly introduced.

The new regulations allow for annual leave to be carried over and to be taken in the next two leave years. Previously the Working Time Regulations 1998 had provided that at least four weeks of the statutory minimum 5.6 weeks leave had to be taken in the current leave year or it would be lost.

The amending regulations will remove the burden on businesses that would have otherwise had to ensure that workers take at least four weeks leave during a time which would not be convenient to either the individual or the employer.

Q: Do the new "roll over" rules apply to all employees, those covered by the working time directive or key workers?

A: Although the Chancellor specifically mentioned key workers when announcing this measure, all employers are subject to the Working Time Regulations 1998, and thus will be subject to the changes in the Working Time (Coronavirus) (Amendment) Regulations 2020.

Q: Can an employer re-hire a former employee and furlough them?

A: Employers are able to re-employ former employees made redundant after 28 February and prior to 19 March 2020, and place them on furlough. They will be able to claim 80% of the employee's monthly wages, up to a monthly cap of £2,500.

Employers can also agree to re-employ former employees who left voluntarily after 28 February and prior to 19 March 2020 e.g. for a new job and place them on furlough. They will be able to claim 80% of the employee's monthly wages, up to a monthly cap of £2,500. This applies as long as the employee was on the payroll as at 28 February and HMRC were notified via a RTI submission on or before 28 February 2020.

Q: How do I implement the Scheme? What potential documents and information does an employer need to give to HMRC?

A: The online portal became operational on 20 April. However, reimbursement can be applied for employees furloughed from 1 March until 30 June.

To make a claim, an employer will need the following information:

- Its ePAYE reference number
- The number of employees being furloughed
- National Insurance Numbers for the furloughed employees
- Names of the furloughed employees
- Payroll/employee number for the furloughed employees (optional)
- Your Self-Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number
- The claim period (start and end date)
- Amount claimed
- Bank account number and sort code
- A contact name/phone number

Employers with fewer than 100 furloughed staff will be asked to enter details of each employee being claimed for directly into the system - this will include their name, national insurance number, claim period and claim amount, and optional payroll/employee number.

Employers with 100 or more furloughed staff 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

Q: Can employees be rotated in and out of furlough leave? For example can you furlough them for three weeks, have them work for two and then furlough them again for three weeks?

A: The guidance states that employees must be furloughed for a minimum period of three consecutive weeks. It will be possible to furlough employees at multiple times, however each instance must be for a minimum period of three three weeks. The 12 June guidance states that the minimum claim period will now be changing to seven calendar days.

Q: Will the money need to be repaid?

A: The Coronavirus Job Retention Scheme is a grant put in place by the UK Government to help employers whose operations have been severely affected by the impact of COVID-19 to pay part of their wage cost. Companies that claim the grant will not be expected to repay money received.

Q: What about employees' benefits? For example, health insurance, private medical, etc...

A: The salary referenced should not include the cost of any non-monetary benefits, taxable benefits in kind, or benefits provided through salary sacrifice schemes. HMRC has agreed that COVID-19 counts as a 'life event' that can warrant changes to salary sacrifice arrangements, which means that the employee could choose to opt out of the salary sacrifice arrangement to maximise the amount received through the furlough scheme.

Q: Is there a requirement to conduct a collective consultation exercise where an employer proposes to put 20 or more employees on furlough leave?

A: An employer wishing to designate 20 or more employees as furloughed in any single establishment within a period of 90 days will have to consider and comply with the additional collective consultation obligations. A form HR1, used for giving the Secretary of State advance notice of collective redundancies should be completed.

However given the unprecedented circumstances presented by the COVID-19 pandemic, it may be possible that this may be partly circumscribed in some cases by the "special circumstances defence" – which is normally an extremely difficult hurdle to be cleared before the defence succeeds.

Q: What if I choose not to put an employee on furlough leave and make them redundant instead – could I face unfair dismissal claims?

A: The Job Retention Scheme provides employers with the opportunity to keep their workforce and to avoid redundancies caused by financial difficulties from the impact of COVID-19 threaten its business then it has no choice but to make redundancies. However, the decision to go ahead with redundancies is likely to be challenged in view of the opportunities provided by the Scheme. Accordingly, legal advice is recommended.

Q: What should form the basis for pay for employees furloughed on return from statutory leave (maternity/paternity/shared parental/adoption/sick/parental bereavement leave)?

A: In calculating the pay for employees furloughed on return from statutory leave including: maternity/paternity/shared parental/adoption/sick/parental bereavement leave, the employer should calculate the grant against the salary before tax not the pay received whilst on statutory leave. If the employees' pay varies, the employer should calculate the grant using either the same month's earning from the previous year, or average monthly earnings for the 2019/20 tax year.

Q: On 29 May 2020 the Chancellor announced some changes to the scheme which now runs to October. What exactly was announced?

A: From July, businesses will be allowed to bring furloughed employees back part-time, a month earlier than previously announced. Individual firms will be able to set the hours and shift patterns for these staff, but they will have to pay all of their wages while they are in work.

There will be a sliding scale of payments by Government to companies and businesses who will take advantage of the furlough scheme from July to October as outlined below.

- In August, the Government will pay 80% of wages up to a cap of £2,500. Employers will have to pay NI and pension contributions.
- In September, the Government grant will reduce to 70% of wages up to a cap of £2,190. Employers will pay NI and pension contributions and 10% of wages to make up 80% total up to a cap of £2,500.
- In October, the Government grant will further reduce to 60% of wages up to a cap of £1,875. Employers will pay NI and pension contributions and 20% of wages to make up 80% total up to a cap of £2,500.

The scheme will close to new entrants on 30 June. In view of the need for any furlough period to last a minimum of three weeks, this means that the final date by which an employer can furlough a worker for the first time will be 10 June. Employers will therefore need to ensure any employees they wish to furlough and claim for under the scheme have been placed on furlough leave by 10 June. The only exemptions are for employees returning from parental leave.

Q: What else has changed?

- A:**
- The 12 June guidance now clarifies that to be eligible for furlough from July, the employee needs to have been furloughed for at least three consecutive weeks between 1 March and 30 June.
 - The minimum claim period is also changing to seven calendar days.
 - Employers will now also face a cap on the number of claims they can make after 1 July, limited by the maximum number of claims made in any single instance between 1 March and 30 June.
 - Furloughing employees on part-time basis raises the question of what constitutes an employee's 'usual hours'? The 12 June guidance states that the usual hours of employees who work variable hours should be calculated by using the wages from the corresponding calendar period last year or the employee's average wage for the 2019-20 tax year, whichever is higher. For employees on a fixed salary, their usual pay is to be taken from their last pay period before 19 March 2020.
 - Where a previously furloughed employee starts a new furlough period before 1 July, this furlough period must last for a minimum of 3 weeks even if this means it will end after 1 July. For employers that have a rotational furlough system in place, if a group of employees furloughed before 1 July would have to remain fully furloughed for three weeks before they can then be put onto a flexible furlough arrangement.
 - The guidance states that an employer needs a "new written agreement" to confirm the new furlough

arrangement. It's not clear if separate agreements are needed each time the employer flexes the furlough period or if the employer can make provision for flexibility in one document.

Q: How to claim flexible furlough?

A: Employers will have until 31 July to make any claims in respect of the period on or before 30 June. Employers must claim separately for grants for the periods covering up to 30 June and from 1 July.

From 1 July onwards, claims must start and end within the same calendar month and cannot overlap different calendar months. This is because the scheme rules will change each month from 1 July with the changing levels of employer contribution. These claims must be made separately even where an employer continues to be furloughed full time in July.

The number of workers an employer can claim for in any single claim from 1 July cannot exceed the maximum number of workers the employer has claimed for up to 30 June. For example, if an employer had previously submitted three claims between March and June, in which the total number staff furloughed were 30, 20 and 50 employees respectively, then the maximum number an employer can furlough in a single claim will be 50.

The only exemptions are for employees returning from parental leave for whom the eligibility criteria and claim caps may not apply. This means that employers who are operating rotating furloughs will not be able to put all previously furloughed employees on flexible furlough at the same time.

If an employer makes an error in a claim resulting in overpayment, they must pay this back to HMRC. Employers can tell HMRC about any overclaimed amount as part of their next claim (and should keep a record of the adjustment for six years). HMRC are looking at a process for paying back overpayments where no future claim is to be made. If there was an underpayment, the employer has to contact HMRC to amend the claim and HMRC will undertake additional checks.

Make sure you are up-to-date by checking the latest at [gov.uk](https://www.gov.uk).

CORONAVIRUS SELF-EMPLOYMENT INCOME SUPPORT SCHEME

The Coronavirus Self-employment Income Support Scheme (SEISS) will see self-employed workers receive up to 80% of profits lost because of disruption to their businesses caused by the coronavirus outbreak.

Similarly to the Coronavirus Job Retention Scheme for employed workers, the amount will be capped at £2,500 per month.

From Monday 4 May 2020, HMRC will begin contacting individuals who may be eligible for the SEISS.

Individuals will be able to claim a taxable grant worth 80% of their average trading profits up to a maximum of £7,500 (equivalent to three months' profits), paid in a single instalment. On 29 May 2020 it was announced that self-employed workers will be eligible for a second grant payment of £2,190 a month for three months. Applications for the second payment, which covers 70% of average trading profits, will open in August.

Who is eligible?

A self-employed worker or a member of a partnership with lost trading/partnership profits due to COVID-19. Individuals:

- With trading profits of less than £50,000 and more than half of total income from self-employment.
- Who have filed a tax return for 2018-19 as self-employed or a member of a trading partnership.
- Traded in 2019 to 2020 or trading at the point of application (or would be except for COVID-19) and intend to continue to trade in the tax year 2020 to 2021.

What period can be claimed for?

The first grant, which will be taxable, will cover March to May 2020 and will be paid in a lump sum. HMRC will use the average profits from tax returns in 2016 to 2017, 2017 to 2018, and 2018 to 2019, to calculate the size of the grant.

How will the funds be accessed?

Individuals and their agents are now being invited to complete their details on an online eligibility checker.

In order to receive quick confirmation from the [eligibility checker](#), individuals should have the following to hand:

- Unique Taxpayer Reference (UTR)
- National Insurance Number
- Ensure their details are up-to-date in their Government Gateway account

Once the online check is complete, they will be given a date when they can submit their claim.

When will the funds be available?

The claim service will open on Wednesday 13 May 2020.

It is expected that grants will be paid into bank accounts by 25 May, or within six working days of completing a claim.

More information and full government guidance of the SEISS [can be found at gov.uk](#).

More support from ACE

Make sure you keep up-to-date with the latest best-practice, guidance and advice on COVID-19 for your business, on our website: www.acenet.co.uk/COVID-19

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