

Overview	Legal Change	Action required
<p><b>Summary of the UK Coronavirus Job Retention Scheme (the "Scheme" or "CJRS")</b></p> <p>Some answers on the Scheme operation. Note this is a rapidly evolving situation. Some issues are yet to be clarified and some answers may change.</p>	<p>The Scheme purpose is to reduce the number of redundancies caused by the impact of Covid-19 (C-19) on business. The method is to support employers by subsidising wages while employees are placed on "furlough leave" (i.e. temporary absence from work).</p> <p>The UK government has agreed to reimburse, as a (<b>non-repayable</b>) grant, 80% of an employee's gross monthly salary up to a cap of £2,500, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions.</p> <p>The Scheme is available to all UK employers, of any size or sector, for an initial period of 3 months from 1 March 2020 (so it will currently runs until 1 June 2020). The government has said that this may be extended if necessary.</p> <p>To be eligible, employers must be paying employees via a PAYE payroll on or before 28 February 2020, be enrolled for PAYE on-line and have a UK bank account.</p> <p>If a company is facing an insolvency situation and is under the management of an administrator, the administrator can also use the Scheme.</p>	<p>The Scheme is not expected to be fully up and running until end of April 2020.</p> <p>Guidance on the application process and on-line platform will follow.</p> <p>Understand what the Scheme can offer you and begin the process to decide whether to furlough staff or make them redundant. Many employers have already done this and many UK employees are already on furlough.</p>
<p><b>Which employees can I furlough?</b></p>	<p>All employees, on any type of contract, who were on their employer's PAYE payroll on February 28<sup>th</sup> 2020 are eligible for the grant, including:</p> <ul style="list-style-type: none"> <li>• full time;</li> <li>• part time;</li> <li>• agency contracts;</li> <li>• flexible or zero hours contracts;</li> <li>• apprentices ;</li> <li>• salaried officers including directors;</li> <li>• salaried members of LLPs; and</li> <li>• employees who TUPE.</li> </ul> <p>This therefore extends to casual workers, but not the self-employed for whom a separate scheme has been created.</p> <p>The following employees are not eligible for the Scheme:</p> <ul style="list-style-type: none"> <li>• new hires since 28 February 2020; and</li> <li>• employees who were already on unpaid leave as at 28 February 2020.</li> </ul> <p>Employees on <b>sick leave</b> or <b>self-isolating</b> on medical advice (for which normal rules apply) can also be put on furlough. Employees who have <b>caring responsibilities</b> (such as for children) can be furloughed.</p> <p><b>Fixed term contract</b> employees can be furloughed while the contract is operating. Contracts can be extended or</p>	<p>Prepare a full list of employees who can be furloughed.</p>

	<p>renewed during the Scheme. If the contract ends, so will the subsidy.</p> <p>Employees made redundant after February 28<sup>th</sup> can be re-hired and placed on furlough. Employees made redundant before then cannot.</p> <p>It is essential that employees <b>do not carry out any work</b> for their employer whilst on furlough.</p>	
<p><b>Do you have to show that the employee would otherwise have to be made redundant?</b></p>	<p>The Scheme intention is to be an alternative to redundancy. However, the guidance notes do not currently require you to provide evidence that you would otherwise have to lay off the employee.</p> <p>Note that HMRC retains the right retrospectively to audit employers' claims, with the ability to claw back fraudulent or erroneous claims.</p>	<p>Whilst you are not required to provide evidence that without furloughing you would have to make staff redundant, it is important to have an audit trail that would support this.</p>
<p><b>What can be claimed?</b></p>	<p><b>Claim:</b> You will be able to claim for the lower of (a) 80% of furloughed employees' usual gross monthly wage costs, or (b) £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer contributions on that wage.</p> <p><b>Wage cost</b> is the actual salary before tax, at February 28<sup>th</sup> 2020.</p> <p><b>Fees, commission and bonuses</b> cannot be claimed.</p> <p><b>Further guidance</b> will be issued on how to calculate these sums before the Scheme goes live.</p> <p><b>Varying pay:</b> For employees with varying pay, you can claim for the higher of:</p> <ul style="list-style-type: none"> <li>- the amount the employee earned in the same month last year; or</li> <li>- an average of the employee's monthly earnings from the last year.</li> </ul> <p>If employed for less than a year, you can claim for 80% of the average of their monthly earnings since they started work. If the employee started work in February 2020 (prior to 28 February 2020), you should pro-rata their earnings from that month and claim 80%.</p> <p><b>Top ups:</b> top ups are not required by the Scheme. If you are seeking to change an employee's wage, normal rules apply and legal advice should be obtained.</p>	<p>You will need to calculate the extent to which this Scheme will help you to retain staff during its term which you would otherwise have to let go.</p> <p>Will you need to try and agree a reduction in wages for staff paid above the Scheme limits?</p>
<p><b>Tax deductions and Pension Payments?</b></p>	<p>The furlough wage is subject to tax and employee national insurance contributions as normal. Employees will also pay automatic enrolment pension contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.</p>	<p>Your payroll provider needs to be involved.</p>

<p><b>Maternity Leave and Statutory Maternity Pay?</b></p>	<p>Guidance confirms that statutory maternity pay will be paid as normal, but if you offer enhanced earnings-related contractual pay for maternity leave, this can be claimed under the Scheme as furloughed earnings. The same applies for contractual adoption, paternity or shared parental pay. It remains to be seen if you need to designate these employees as furloughed in order to claim under the Scheme.</p> <p>You may find that employees seek to return to work at an earlier stage than previously planned from these types of leave, if being furloughed would be more advantageous to them financially.</p>	<p>Make sure staff on maternity leave are not overlooked.</p>
<p><b>Employee benefits?</b></p>	<p>Benefits such as health insurance, private medical, gym membership etc should be maintained unless otherwise agreed with furloughed employees.</p> <p>The costs of the benefits do appear to be recoverable under the Scheme (save for pension contributions at the minimum level).</p>	
<p><b>What do you receive?</b></p>	<p>The grant to employers includes the associated wage costs of employer National Insurance contributions and minimum auto-enrolment pension contributions (3%) in addition to the 80% of a furloughed employee's normal wages, or £2,500. It does not include top ups you make.</p> <p>Some "regular" payments to employees may be claimed such as past overtime, fees and compulsory (not discretionary) commission payments. Tips are not included.</p>	<p>Understand in financial detail what the Scheme can offer you during its term and the extent to which you can viably avoid redundancies as a result.</p>
<p><b>Working while on furlough?</b></p>	<p>Furloughed employees must <b>not work</b> while on the Scheme. However, employees may undertake training or voluntary work provided it does not provide services or generate income for you. If you require employees to do training the national minimum wage rules apply.</p> <p>Employees on furlough can work elsewhere. Employers can prevent this if so stated in the employment contract but should be thoughtful before doing so. Employees should be told the company's policy on this and also that they must be available to return to work if furlough is ended.</p>	<p>Make sure managers and furloughed staff understand that no work can be done on furlough. Training maybe possible.</p>
<p><b>How to implement the Scheme?</b></p>	<p>The Scheme is not expected to be up and running until end of April 2020 and so the precise details of the application portal remain uncertain. However, following the recent guidance, it appears that you will need to provide the following to make an application:</p> <ul style="list-style-type: none"> <li>- Employer's ePAYE reference number;</li> <li>- Number of employees being furloughed;</li> <li>- Claim period (start and end date);</li> <li>- Amount claimed (including the amount of Employer; National Insurance Contributions and minimum automatic</li> </ul>	<p>The guidance notes and understanding of the Scheme and the processes involved are evolving.</p> <p>Keep informed of developments and take legal advice where you are not sure.</p> <p>To be eligible for the grant</p>

	<p>enrolment pension contributions)</p> <ul style="list-style-type: none"> <li>- Bank account name and sort code;</li> <li>- Contact name;</li> <li>- Phone number;</li> </ul> <p>You will need to have calculated the amount you are planning to claim. We therefore recommend you collate this information now so the application can be made as soon as possible. HMRC retain the right to retrospectively audit all aspects of the claim.</p>	<p>employers must write to the employee confirming that they have been furloughed. If this is done consistent with employment law, the consent is valid for the purposes of claiming the CJRS. There must be a written record but the employee does not have to provide a written response. A record of this communication must be kept for five years.</p>
<p><b>Selecting employees for furlough?</b></p>	<p>Employees who are unable to work from home or have no work to do are likely to be the first choice. In other cases, employers may need to consider carrying out a process akin to a redundancy process - asking for volunteers, pooling and selection. Note that equality and discrimination laws still apply in the usual way. <b>There is a risk of claims if the selection process is not handled fairly.</b> It would be prudent to seek legal advice if you are unsure about how to manage this.</p>	<p>As this may be similar to a redundancy selection process, taking legal advice on staff selection is recommended.</p>
<p><b>Employees perspective?</b></p>	<p><b>Refusal:</b> An employee can refuse to be "furloughed" although this is likely to put them at increased risk of redundancy/termination of their employment. Any redundancies/dismissal must be carried out in line with normal redundancy rules and statutory protections.</p> <p><b>Consultation:</b> it seems likely that where you expect to furlough 20 or more employees a consultation exercise is needed.</p> <p><b>Annual leave:</b> the impact of the Scheme on annual leave is complex and technical and will updated separately.</p>	<p>Plan for collective consultation if 20 or more staff are to be furloughed.</p>
<p><b>Redundancy?</b></p>	<p><b>During furlough:</b> Employees can still be made redundant whilst they are on furlough leave or afterwards. Normal redundancy/dismissal rules and a fair process must be followed.</p> <p><b>Instead of furlough:</b> This could result in an unfair dismissal claim. It will depend on the individual economic circumstance of the employer. You should make sure you keep a clear record of the basis of your decision to dismiss instead of furlough.</p> <p><b>After furlough:</b> It may be that once the scheme ends you still need to make an employee redundant. If so, normal redundancy rules apply.</p>	<p>Apply normal dismissal procedure.</p> <p>Keep a clear audit trail of your decision not to furlough.</p>
<p><b>When the Scheme ends?</b></p>	<p>When the Scheme ends employees can return to work and they will be entitled to all of their employment rights and their period of continuous service will remain unbroken.</p> <p><b>There is no obligation to pay back furloughed subsidies received.</b></p>	<p>HMRC have retained the right to carry out an audit so make sure you have kept records and a clear audit trail of decision you have made.</p>

**This is a high level general update only. Legal advice should be obtained on specific circumstances.**