

# Further Guidance Issued on Coronavirus Job Retention Scheme

Correct as of 6th April 2020

Details of the Coronavirus Job Retention Scheme continue to be released as the UK Government and HMRC continue to fine tune the scheme and provide further guidance on its operation ahead of its launch later this month. We have provided updates when the scheme was first announced and when further guidance was issued on 26 March 2020. Further guidance was released this weekend in an attempt to clarify many unanswered questions, the key points of the updated guidance are summarised below.

## Who can be furloughed?

### Apprentices

Apprentices enjoy enhanced protections over normal employees, however the updated guidance confirms that they can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, SGBs must pay Apprentices at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means unlike in other cases where SGBs only have to pay 80% of wages SGBs must cover any shortfall between the amount they can claim for wages through the Coronavirus Job Retention Scheme and their appropriate minimum wage.

### Employees made redundant or who stopped working for SGBs after 28 February

If an employer made employees redundant, or they stopped working for you on or after 28 February 2020, SGBs can re-employ them, put them on furlough and claim for their wages through the scheme. This expansion from solely redundant employees will mean SGBs could re-hire individuals who left employment and their new employment opportunity was lost as a result of the pandemic.

### Shielding Employees

SGBs can claim for furloughed employees who are shielding in line with public health guidance (or need to stay home with someone who is shielding) if they are unable to work from home and you would otherwise have to make them redundant.

### Employees with caring responsibilities

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

### If an employee is on a fixed term contract

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. Where a fixed term employee's contract ends because it is not extended or renewed you will no longer be able claim grant for them from the point the contract ends.

### Eligible individuals who are not employees

As well as employees, the Coronavirus Job Retention Scheme can be claimed for any of the following groups, if they are paid via PAYE:

- office holders (including company directors)
- salaried members of Limited Liability Partnerships (LLPs)
- agency workers (including those employed by umbrella companies)
- limb (b) workers

In relation to directors there is a slight relaxation of guidance issued previously stating furloughed individuals were unable to provide services for their employer. Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to the company, they may do so provided they do no more than would reasonably be judged necessary for that purpose. For instance, they

should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

## How to furlough

### Process for furloughing staff

It has been noted previously that SGBs should discuss with their staff and make any changes to the employment contract by agreement and that when SGBs are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

Further guidance has been issued stating that to be eligible for the grant SGBs must confirm in writing to their employee confirming that they have been furloughed, this requirement was not previously intimated. A record of this communication must be kept for five years, this presumably will be the period of time during which HMRC may conduct audits in relation to the scheme.

### Minimum furlough periods

The guidance also offers more detail on how often employees can be furloughed as it explains that any employee placed on furlough must be furloughed for a minimum period of 3 consecutive weeks. When they return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.

### Working for a different employer

If contractually allowed, employees are permitted to work for another employer whilst they are on furlough. Many furloughed employees have sought additional employment with supermarkets and wholesalers who are experiencing increased demand at this time.

For any employer that taking on a new employee, they should ensure they complete the starter checklist form correctly. If the employee is furloughed from another employment, they should complete Statement C.

## How much can SGBs claim for?

As has been explained previously SGBs can claim for 80% of an employee's wage costs, further detail of what this does and doesn't include has been revealed. The guidance has been amended to provide clarity on the definition of wage costs as it pertains to the Coronavirus Job Retention Scheme which seems to differ from ordinary statutory definitions of wages.

SGBs should claim for:

- 80% of employees' wages (even for employee's on National Minimum Wage) - up to a maximum of £2,500.
- minimum automatic enrolment employer pension contributions on the subsidised wage

## Past Overtime, Fees, Commission, Bonuses and non-cash payments

SGBs can claim for any regular payments they are obliged to pay their employees. This includes wages, past overtime (presumably overtime worked prior to them being furloughed), fees and compulsory commission payments, these are presumably all payments provided for in the contract of employment. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

## Benefits in Kind and Salary Sacrifice Schemes

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary. Where the employer provides benefits to furloughed employees, this should be in addition to the wages that must be paid under the terms of the Coronavirus Job Retention Scheme.

Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

## Get in touch

SGBs can access the **sportscotland** legal expert resource helpline by email at [sportscotlandinfo@harpermacleod.co.uk](mailto:sportscotlandinfo@harpermacleod.co.uk) or by calling 0141 227 9333.