

Coronavirus Job Retention Scheme guidance updated to reveal details of Flexible Furlough

Correct as of 15th June 2020

We have provided various updates including when the scheme was first announced, when [further guidance was issued on 26 March 2020](#), on [6 April 2020](#), on [8 April 2020](#) as further details were announced, on [9 April 2020](#), on [15 April 2020](#) as the scheme expanded in scope, when the scheme went live on [20 April 2020](#), when the scheme was [extended until the end of October](#), when the [Treasury Directions were updated](#) and on [29 May 2020](#) when changes to the scheme were announced.

Two weeks after the Chancellor Rishi Sunak announced that the scheme would be changing from 1st July 2020 with the introduction of Flexible Furlough, the HMRC guidance has been updated to explain how the scheme will operate from 1st July until it closes on 31st October 2020.

Whilst welcome, the update does seem to indicate there will be some practical complexities in the operation of the scheme for SGBs, particularly in relation to the flexible furlough elements.

Changes to eligibility

From 1 July 2020, only employees that SGBs have successfully claimed a previous grant for will be eligible for more grants under the scheme. This means employees must have previously been furloughed for at least 3 consecutive weeks taking place any time between 1 March and 30 June 2020. For the minimum 3 consecutive week period to be completed by 30 June, the last day an employee could have started furlough for the first time was 10 June.

For employees that meet the criteria above, the number SGBs can claim for in any single claim period starting from 1 July cannot exceed the maximum number of employees you claimed for under any claim ending by 30 June.

For example, a SGB had previously submitted three claims between 1 March 2020 and 30 June, in which the total number employees furloughed in each respective claim, was 30, 20 and 50 employees. Then the maximum number of employees that SGB could furlough in any single claim starting on or after 1 July would be 50.

There are some exceptions explained to this new cap for employees returning from parental leave where this cap may not apply.

If a SGB has employees returning from maternity, shared parental, adoption, paternity or parental bereavement leave after 10 June, SGBs can furlough them after 10 June even if this would mean furloughing them for the first time. SGBs may do this provided that:

- they have previously submitted a claim for any other employee in their organisation in relation to a furlough period of at least 3 consecutive weeks taking place any time between 1 March 2020 and 30 June
- the employee started maternity, shared parental, adoption, paternity and parental bereavement leave before 10 June and has returned from that leave after 10 June
- the employee was on the SGB's PAYE payroll on or before 19 March 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020

When calculating the maximum number of employees that a SGB can claim for, the number of employees they are furloughing for the first time due to them returning from parental leave should be added to the previous maximum. This means the maximum number of employees a SGB can claim for in these circumstances, is the maximum they claimed for in any one claim before 30 June, plus any employees that they are furloughing for the first time due to them returning from parental leave.

Flexible Furlough Scheme

Whilst the new scheme supports Flexible Furlough SGBs can still have employees on 'full-time furlough'; however as before these employees can not undertake any work for their SGB whilst furloughed. If an employee is fully furloughed, then there is no need to do any calculations involving hours worked and hours furloughed, SGBs can continue to the maximum amount allowed subject to the staged reduction of government contributions in the coming months.

From 1 July, SGBs can bring furloughed employees back to work for any amount of time and any work pattern, while still being able to claim the grant for the hours not worked. An agreed flexible furlough agreement can last any amount of time and can be entered into with an employee more than once.

Under Flexible Furlough, employees no longer need to avoid doing any work for SGBs they can work for some of the week and be furloughed for the rest. It is for SGBs and employees to decide the hours of work and the hours of furlough.

Even if SGBs already have a written furlough agreement with furloughed employees, it is recommended that if employees are moved onto flexible furlough, a separate and new agreement is entered into. SGBs will need to keep a copy of this for a period of 5 years. If the hours of work change from those that are initially agreed due to an increased need for work, then SGBs are likely to need something new in writing to cover each separate arrangement.

Although flexible furlough agreements can last any amount of time, unless otherwise specified the period that SGBs can claim for must be for a minimum claim period of 7 calendar days.

If SGBs decide to make use of Flexible Furlough they will claim an amount of 80% of salary, based on the proportion of hours not worked out of the employee's normal working hours (their "usual" hours). There are 2 ways to calculate an employee's usual hours, depending on whether they have fixed or variable hours/pay:

For employees with fixed hours/pay, SGBs should take the number of hours worked in the last pay period before 19 March 2020.

For employees with variable hours/pay, SGBs should take the higher of (a) the average number of hours worked in the tax year 2019 to 2020 or (b) the corresponding calendar period in the tax year 2019 to 2020. If employees are paid per task or piece of work done, SGBs should work out the usual hours for these employees in the same way as for other employees who work variable hours, if possible.

The Government has provided a useful example of how SGBs would calculate what they should claim for employees on flexible furlough [here](#).

SGBs need to be careful that the claims you make are correct. It is understood that HMRC will check claims and payments may be withheld or need to be paid back if the claim is found to be (a) fraudulent or (b) based on incorrect information. It is expected that the Finance Bill is due to be amended this week which will give HMRC additional powers to pursue SGBs for any breaches of the CJRS rules.

Other Changes to the Scheme

Previously furloughed employees had to be placed on furlough for a period of at least 3 consecutive weeks. However from 1 July, arrangements under the Flexible Furlough can last any amount of time. SGBs should note that although flexible furlough agreements can last any amount of time, the minimum claim SGBs can make is for one week (unless you are claiming for the first few days or the last few days in a month).

In addition after 1 July, SGBs cannot make claims that cross calendar months, so SGBs will need to consider how they organise future claims. Claim periods must start and end within the same calendar month and must be at least 7 days unless SGBs are claiming for the first few days or the last few days in a month. SGBs can only claim for a period of fewer than 7 days if the period they are claiming for includes either the first or last day of the calendar month, and they have already claimed for the period ending immediately before it.

In terms of record keeping the new guidance reiterates that SGBs will need to keep records of how many hours employees work and how many hours they are furloughed (i.e. not working), this is especially important if HMRC do audit to ensure that any claims are within the scheme rules

vSGBs must keep a copy of these records for 6 years, together with a record of the amount claimed, their claim reference number and their calculations in case HMRC need more information about their claims.

What happens when the scheme closes?

When the CJRS ends on 31 October, SGBs must decide, whether employees will return to their normal hours. If not, it may be necessary to consider other measures to control employee costs such as reducing hours of work, salary reductions, removal of other benefits or even redundancies. Of course, if you need to, you can make redundancies or changes to terms and conditions in advance of 31 October. The updated guidance clarifies that "normal redundancy rules apply to furloughed employees". However, any such measures will be subject to usual employment law rules, and must be carefully handled.

Get in touch

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