

Further Guidance Issued on Coronavirus Job Retention Scheme

Correct as of 14th 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, when further guidance was issued on 26 March 2020, on 6 April 2020 and 8 April 2020 as further details have been announced. Further guidance was released on 9th April in an attempt to clarify many unanswered questions before the scheme goes live next week. The key points of the updated guidance are summarised below.

Who can be Furloughed?

The updated guidance has confirmed that, the Coronavirus Job Retention Scheme is not intended for short-term absences from work due to sickness and that short term illness/ self-isolation should not be a consideration in deciding whether to furlough an employee.

If, however, SGBs want to furlough employees for business reasons and whilst they are off sick, they are eligible to do so, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee.

The Government has also clarified that SGBs are entitled to furlough employees who are being shielded or off on long-term sick leave. It is up to SGBs to decide whether to furlough these employees.

SGBs can claim back from both the Coronavirus Job Retention Scheme and the SSP rebate scheme for the same employee but not for the same period of time, so SGBs will need to ensure that they are careful to designate the correct status to those employees. When an employee is on furlough, SGBs can only reclaim expenditure through the Coronavirus Job Retention Scheme, and not the SSP rebate scheme.

If an employee becomes sick while furloughed

Furloughed employees retain their statutory rights, including their right to Statutory Sick Pay. This means that furloughed employees who become ill must be paid at least Statutory Sick Pay. It is up to SGBs to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.

If a furloughed employee who becomes sick is moved onto SSP, SGBs can no longer claim for the furloughed salary. SGBs are required to pay SSP themselves, although may qualify for a rebate for up to 2 weeks of SSP. If SGBs keep the sick furloughed employee on the furloughed rate, they remain eligible to claim for these costs through the furloughed scheme.

Shielding Employees

Employees who are unable to work because they are shielding in line with public health guidance (or need to stay home with someone who is shielding) can be furloughed.

Contractors with public sector engagements in scope of IR35 off-payroll working rules (IR35)

Public sector bodies will follow the Crown Commercial Services guidance in the vast majority of cases. However in a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, it may be appropriate to claim under the CJRS for those staff. Contractors who are deemed employees according to the off-payroll working rules might be eligible for this scheme.

In this scenario, if the public sector organisation wished to furlough a contractor, they would have to confirm this with both the contractor's Personal Service Company (PSC) and the fee-payer (as set out in the off-payroll working rules, usually the agency paying the contractor's PSC). It should be formally agreed between these parties that the contractor is

not to do any work for the public sector organisation during their period of furlough. The fee-payer would be able to apply for the furlough payment of 80% of the monthly contract value, up to a maximum of £2,500, as well as the employer NICs on that subsidised wage. The fee-payer would then pay at least the amount of wage-grant received to the PSC, and report the payment via PAYE using the contractor's details, making the usual tax and National Insurance contributions (NICs) deductions for contracts in scope of the off-payroll rules. The PSC would then be required to report the amount it pays to the contractor as deemed employment income via PAYE using box 58A on the PAYE Real Time Information return.

Where a contractor is continuing to receive payments from a public sector client (including through the CJRS or other any other scheme), income from this client should be excluded from any calculation of the reference pay for the purposes of the CJRS if the contractor also decides to furlough themselves as an employee or director of their own company.

Employee transfers under TUPE and on a change in ownership

A new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 28th February 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

How much SGBs can claim

As has been established in every version of the guidance SGBs will need to claim for:

- 80% of employees' wages (even for employee's on National Minimum Wage) - up to a maximum of £2,500 per month. Do not claim for the worker's previous salary.
- Employer National Insurance contributions that are paid on the subsidised furlough pay.
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It has been further clarified that employer pension contributions should be paid on the subsidised furlough pay, up to the level of the minimum automatic enrolment employer contribution. The maximum level of grant for employer pension contributions on subsidised furlough pay is set in line with the minimum automatic enrolment employer contribution of 3% on qualifying earnings. Grants for pension contributions can be claimed up to this cap provided the

employer will pay the whole amount claimed to a pension scheme for the employee as an employer contribution.

Benefits in Kind and Salary Sacrifice Schemes

The guidance has also set out that 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.

All the grant received to cover an employee's subsidised furlough pay must be paid to them in the form of money. No part of the grant should be netted off to pay for the provision of benefits or a salary sacrifice scheme.

Returning from statutory leave

The previous iterations of the guidance have clarified what different staff should be paid who don't have a fixed rate of pay such as those who work variable hours. The newest guidance explains what those who are returning from statutory leave should be paid.

Statutory leave includes maternity leave, paternity leave, shared parental leave, adoption leave, sick leave and parental bereavement leave.

In line with other employees, claims for full or part time employees returning from statutory leave after 28 February 2020 should be calculated against their salary, before tax, not the pay they received whilst on statutory leave.

Claims for those on variable pay, returning from statutory leave should be calculated using either the:

- same month's earning from the previous year
- average monthly earnings for the 2019-2020 tax year.

What you'll need to make a claim

With the portal due to go live in less than a week HMRC are encouraging SGBs to get organised for the scheme to go live. Whilst the online portal can process large numbers of SGBs at any one time the capacity issues are likely to be on telephone support if required when submitting an application. Therefore HMRC have published the following

list of information which SGBs will require to submit an application to the scheme.

To claim, SGBs will need:

- employer PAYE reference number
- the number of employees being furloughed
- National Insurance Numbers for the employees to be furloughed
- Names of the employees to be furloughed
- Payroll/works number for the employees to be furloughed
- 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 (per the minimum length of furloughing of 3 consecutive weeks)
- SGBs bank account number and sort code
- SGBs contact name
- SGBs phone number

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**.