

# Furlough- grant funding

*Correct as at 3rd April 2020*

As with all aspects of the furlough scheme, the extent to which the scheme will operate in favour of any grant award requested, will be dependent on the guidance made available by HM Government and ultimately how that guidance is applied by HMRC, who will run the scheme.

There are many roles in sport which receive partial or full grant funding, with public funding paying to support those roles. The following captures our view on the likely application and approach to the furlough scheme. This note is considered correct at 3rd April 2020. SGBs are advised to check the guidance published by HM Government and if concerned to take specific advice before deciding whether to furlough.

This note focuses on grant funded roles because HM Government guidance specifically notes that as a general principle, publically funded roles should not fall within the furlough scheme where that funding continues.

This is an excerpt of HM Government guidance as at today's date. SGBs should be aware that the guidance may be updated:

*"Where employers receive public funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public funding for staff costs."*

This note seeks to develop this guidance.

## Wholly grant funded posts

1. Assuming the grant funding continues, then furlough is not an option and these roles cannot be furloughed.
2. If the funding ends, for example because there is no activity being carried out, then furlough may be possible.

3. If funding was temporarily ended with the agreement of both parties, with a view to it recommencing e.g. following a few months and lock-down passing, in our view, then furlough would not be available. The reasoning is that furlough is not intended to be used to cover, in this way.
4. If funding was temporarily suspended by the funder, in a unilateral act, if the funder has no right to do this, the SGBs should assert their entitlement to receive the funding and press to receive monies to make payment to staff. We expect that furlough if applied for and received would be repaid if the grant was then paid.
5. Please be aware that Scottish Government guidance is clear. The expectation is that if an SGB is applying for furlough, it must be able to demonstrate with regard to clear evidence that the SGB is not requesting furlough for grant funded staff.
6. You must bear in mind that whilst the grant funded system being created by HMRC will involve some form of application and self-certification, it is also going to be the subject of audit by HMRC in years to come, with the possibility of recoupment. SGBs may also wish to operate on the basis that it is also inherently likely that **sportscotland** will need to seek comfort that grant funded posts have not been the subject of furlough.

## Part funded posts

7. The furlough guidance does not address this expressly.
8. In our view, it is not possible to access full furlough when part-funding grant continues.
9. The reason is that typically when a part-funded role grant is made, it is on the basis of an agreement that the

public funds will be provided to help fund a role, provided that the entity receiving the grant will pay the remainder of the cost.

10. As a result, in our view, it would be incompatible with an SGB's obligations to continue to receive, by way of grant, part-funding for a role and to receive that money based on continued representations to reciprocate by providing the other part of funding; and yet to then represent to HMRC that the role should be furloughed and be, substantially, paid for by furlough.
11. The intent of furlough is to provide a mechanism to secure continued employment for people; not to provide extra monies to an SGB beyond the actual employment costs, which would likely be the result of accessing furlough for part-funded staff.
12. The only prospect we can see for SGBs to access furlough for part-funded roles, is if the SGB only applies for the unfunded part of the role and HMRC accepts this in practice. There is no indication from the guidance available that this would be acceptable.
13. Remembering that in general terms, in furlough, HMRC is prepared to pay no more than £2,500 plus employers national insurance and the minimum pension contribution to a role, with £2,500 reducing to the equivalent of 80% of salary if less, then, if an SGB is prepared to try to access the furlough grant, we would recommend that:
  - a. The SGB understands that there is no certainty that the grant will be provided and/or the SGB may be required to repay the grant in due course;
  - b. The SGB should apply a formula to ensure that (i) the grant money is excluded from any claim; (ii) that the government formula is applied; and (iii) the furlough grant request is limited to the remainder available otherwise paid by the SGBs from private income. Consider this example:

Employee annual salary is £36,000; £3,000 per month

Grant paid is £18,000 per annum; equivalent to £1,500 per month

Apply furlough formula - 80% of annual salary per month is £2,400 per month (less than £2,500 limit)

Employers NI on £2,400 is £331.20

3% pension contribution on £2,400 is £72

Total cost to furlough is £2,400 plus employers £2,802.20

Grant request to HMRC could be £2,802.20 less £1,500 = £1,302.20

14. If the part-funding has ceased (similar to para 2 above), then a request for all costs may be applied for, provided that the guidance at paras 5 and 6 above is borne in mind. An SGB would need to be able to confidently demonstrate, with reference to documents and emails or letters, that grant funding has concluded and is not available.

### Miscellaneous

15. If an SGB passes public funds on to a club, for funding of employment, the SGB must ensure that the above principles are applied by SGBs.

## 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**.