

The Coronavirus Job Retention Scheme

Key Details - November 2020

The Coronavirus Job Retention Scheme (the “Scheme”) is designed to provide payments to employers for the costs of furloughed employees. The Scheme has been extended until 31 March 2021.

HMRC’s current guidance is available [here](#).

The Scheme covers the period 1 March 2020 to 31 March 2021. The Scheme was originally due to end on 31 October 2020 and provided reducing amounts of grant under a “phase out”, together with additional flexibility in the period between 1 July and 31 October. The Scheme was effectively relaunched for the period 1 November 2020 to 31 March 2021. This note focuses on this later period.

From 1 November 2020 the Scheme will reimburse up to 80% of an employee’s usual wages for hours not worked, subject to a maximum of £2,500 per month. The Scheme will be reviewed again in January 2021 and may be subject to change.

To be included within the Scheme an employee must have been employed (and paid) by 30 October 2020 at the latest.

Some of the key features of the Scheme, in its updated form, are highlighted below.

The amount that can be claimed

From 1 November 2020, the Scheme will reimburse employers for **80%** of a furloughed employee’s salary for the hours not worked (up to a maximum of £2,500 per month). However, there will be no reimbursement for associated

employer’s costs (such as employer’s National Insurance Contributions (“NICs”) or employer pension contributions).

AMOUNT TO PAY EMPLOYEES

Employers are able to agree with employees how much they will be paid during furlough for the hours they do not work, but any pay in excess of the limit of £2,500 per month (or associated pro-rata), including any “top up” payments that employers may choose to make, will not be reimbursed under the Scheme.

Unless otherwise agreed with employees in line with usual employment law considerations, employees must receive full pay for any hours they work, and their usual pay for any holidays they take (including bank holidays).

Eligibility

The Scheme is open to any UK employer with a PAYE scheme and UK bank account.

To be eligible, employees must have been paid via PAYE as at 30 October 2020. Any employees who have been made redundant on or after 23 September 2020 can be re-hired and put on furlough immediately. Any employees who have not already been paid via PAYE by 30 October 2020 are not covered.

HMRC guidance highlights that where staff costs are publicly funded (whether the employer is within the public sector or not), employees should not be furloughed.

Employees can be furloughed in a flexible manner – this could be a full cessation of work or a reduction in an employee’s usual working hours.

Employees do not need to be furloughed for a minimum period, although claims under the Scheme must be for a minimum period of seven (calendar) days. With “flexible furlough” arrangements employees who have been furloughed can return to work and be put on furlough again in the future, or change the number of hours they are working.

From 1 December 2020 claims cannot be made for any employees who are serving their notice period.

Working out an employee’s salary

FULL AND PART TIME WORKERS

The claim should be calculated based on the employee’s actual gross salary (excluding any bonuses, commission, and similar items) for the last pay period ending on or before:

- 19 March 2020 for employees who were already employed and paid by this date, or for whom a valid claim was made under the Scheme relating to any period up to (and including) 31 October 2020; or
- 30 October 2020 for other employees.

FLEXIBLE (OR ZERO) HOUR CONTRACTORS, OR EMPLOYEES WHOSE PAY VARIES.

For employees who were already employed and paid by 19 March 2020, or for whom a valid claim was made under the Scheme relating to any period up to (and including) 31 October 2020, the claim is calculated based on the higher of (1) the same month’s earnings from the previous year; or (2) the average monthly earnings from the 2019-20 tax year.

For other employees, the average monthly earnings payable between 6 April 2020 (or the first day of employment, if later) and the day before they are furloughed (on or after 1 November 2020) should be used.

Tax treatment – employer and employee

Payments to employees during furlough are to be treated as normal salary payments. This means they need to be paid via payroll and subject to the usual deductions via PAYE for income tax and NICs (including payment of employer’s NICs).

The reimbursement from HMRC via the Scheme will need to be included in the calculation of taxable business profits for corporation (or income) tax purposes. However, the employer will still be able to deduct the costs of paying salary to furloughed employees and therefore the net tax effect should be neutral.

Employment law considerations

Employers cannot unilaterally decide to place employees on furlough, whether full or part-time (unless there are specific contractual provisions already in place). Therefore, agreement will need to be reached with employees (or, in certain cases, with representative bodies such as trade unions). Given the most obvious alternative to furlough would be redundancy it is not anticipated that reaching agreement will be too arduous.

It is recommended that agreements are in writing, and it is a requirement that employer confirm the furlough in writing with the employee, which must be retained for five years.

In addition, the following considerations from an employment law perspective are likely to be key:

- Reaching agreement with employees on the amount they will be paid during furlough;
- Complying with equality and discrimination legislation when choosing whom to furlough;
- Deciding how contractual benefits in kind will be treated during furlough (and reaching agreement with employees if these are to be altered or suspended) – the default position being for them to continue as usual; and
- Noting that employees on furlough continue to have their usual employment rights (e.g. in relation to parental arrangements, sick pay, redundancy, and unfair dismissal etc).

The National Minimum Wage (“NMW”) does not apply to employees who are furloughed as they are not working. However, if employees are undertaking any training (which is permissible – see below) they will need to receive the NMW for these hours (even if this means the employer will need to pay them more than is reimbursed by the Scheme).

Employers will need to keep sufficient records of agreements with employees and copies of their communications to employees confirming they have been furloughed.

Ongoing duties and training

The Scheme is very clear – employees cannot provide any services to (or generate any revenue for) their employer whilst on furlough (i.e. during the hours which they do not work). If they do, their costs cannot be reclaimed under the Scheme.

However, an employee can undertake training (so long as doing so does not mean they are providing services to, or generating revenue for, their employer). The most common example would be online training courses. During the time spent on training employees will need to receive the NMW (see above).

How to make the claim

Claims are made via an online HMRC portal.

Employers will need to calculate the amount of their claim themselves, although HMRC provide an online calculator to assist. Therefore, it will be important to have a procedure in place for checking and documenting the calculation, in case of future audit by HMRC.

In addition to the amount of the claim, employers will also need to provide the following information to claim:

- Their ePAYE reference number;
- The number of employees being furloughed;
- The claim period (start and end date); their bank account details; and
- A contact name and number.

Where an employer has 100 or more employees furloughed in a single claim period details will be uploaded via spreadsheet. For claims with 99 or fewer employees, details must be entered individually.

Timing and interim cashflow issues

From 1 November 2020, claims must be submitted within 14 calendar days of the end of the month for which the claim is made (or the next working day, where relevant).

Claims can be made before, during or after the payroll is run as long as the claim is submitted by the relevant claim deadline, but cannot be made more than 14 days before the claim period end date.

HMRC are currently making payments within 6 working days of completed claims and it is hoped this will continue. Depending on timescales it may still be necessary for employers to pay employees before they have received any funds from their Claim, however they should receive funds in advance of their liability to make payments of PAYE tax and NICs.

We understand that HMRC are no longer agreeing Time to Pay arrangements for PAYE which cover any payments funded by grants under the Scheme.

For employers suffering cash flow issues (given that furloughed employees will need paying before reimbursement from the Scheme is received), the various Coronavirus loan options (e.g. the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme, and the COVID-19 Corporate Financing Facility) may provide some help.

Compliance checks and penalties

There has been a large amount of publicity around the high level of mistakes and potential fraud in relation to the Scheme. HMRC initially focused on paying claims as quickly as possible and it has always been expected that corrective action would follow.

In June, HMRC allowed employers to self-report errors, with the default position for any errors discovered by HMRC after the later of (1) 30 October 2020; or (2) 90 days after the payment of a grant being that such errors are deliberate – attracting potential penalties of 100% of the amount incorrectly claimed, together with the potential for employers to be “named and shamed”.

It is imperative that all employers making a claim under the Scheme carefully document their process, double check all claims and retain all necessary information (including details of hours worked for individuals not furloughed on a full time basis) and calculations for at least six years.

Where mistakes are discovered, employers should self-report to HMRC within 90 days of the receipt of the relevant grant to avoid potential additional penalties.

Worked example

In order to demonstrate the calculation and the timing of payments, the below worked example may be helpful:

- An employee with an annual salary of £24,000 and no benefits in kind (other than the minimum possible pension contributions) is furloughed on 80% pay from 1 November 2020 for a period of 3 months;
- The employer and employee make the minimum possible pension contributions under automatic enrolment;
- The employer makes salary payments to employees on the 28th of the month, and makes payment to the pension provider for that month’s contributions on the same day; and
- The employer makes payment of PAYE to HMRC by the 22nd of the following month.

The amount the employer is able to claim under the Scheme for each month will be as follows (estimate using tax thresholds for 2020-21, actual amounts will differ):

80% of regular salary	£1,600	capped at £2,500
Employer's NIC	£0	No longer claimable
Employer's pension contribution	£0	No longer claimable
Total claim	£1,600	

The employer will need to process the employee's furlough pay via payroll for PAYE as normal:

80% of regular salary (gross pay)	£1,600	as agreed between employer and employee
Employee's pension contribution	-£43	as agreed, subject to minimum
PAYE – income tax	-£111	
PAYE – employee NIC	-£97	
Net pay to employee	£1,348	

The employer will need to make payments to the employee, the pension provider, and to HMRC:

Net payment to employee	£1,348	paid on usual date
Payment to pension scheme	£76	paid on usual date
Payment to HMRC via PAYE	£328	paid by 22nd of following month

This will mean that the net cost to the employer will be along the following lines:

80% of regular salary (gross pay)	£1,600	as agreed between employer and employee
Employer's pension contribution	£32	minimum auto enrolment contribution, or more
PAYE – employer NIC	£120	
Total employee expense	£1,752	
Less: grant	-£1,600	
Net cost to employer	£152	

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