

Guidance note: Coronavirus Employment Schemes

This guidance note was produced by the **Association for Consultancy and Engineering (ACE)** for the **Construction Leadership Council (CLC)**.

All information contained within this document is believed to be correct as of **31 March 2020**.

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Background

On 20 March 2020, the UK Government announced the introduction of the **Coronavirus Job Retention Scheme** to support employers through the financial impact of **COVID-19**.

As part of the scheme the Government announced that employers would get support for employees whom they put on furlough due to disruption to their businesses caused by the coronavirus outbreak.

On 26 March, the UK Government announced the introduction of the Coronavirus **Self-Employment Income Support Scheme** (SEISS) to support self-employed workers.

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All information contained within this document is believed to be correct as of 30 March 2020.

Coronavirus Job Retention Scheme

The scheme only applies to staff on an employer's PAYE system, so will not cover self-employed staff. Under the scheme, employers will need to:

- Assess their workforce and designate them into two groups. Those who will continue to work and those affected employees who will no longer work - and designated as "furloughed workers"; and notify employees of this.
- Submit information to HMRC online about employees that have been "furloughed" and their earnings.

All employers with a PAYE scheme that was set up on or before 28 February 2020 will be eligible to apply under the scheme. It will be initially open for three months, but may be extended if deemed necessary by the Government. The scheme will be able to cover the cost of wages backdated to 1 March 2020 and employers will use a yet to be published online portal to apply to the scheme.

Additional information and official guidance on the Coronavirus Job Retention Scheme [can be found at gov.uk](https://www.gov.uk).

What does "furlough" mean?

Furlough is a mandatory time off from work with no pay. It is generally implemented by employers as a cost-saving measure during tough economic times or otherwise slow periods. In the US, where it is more commonly used, it operates to force employees to be temporarily absent from work as an alternative to redundancy, so that they can readily return in due course.

Key issues

Some of the key issues that employers will need to consider are:

1. The Government has made it clear that designating an employee as a “furloughed worker” remains subject to existing employment law and dependent on the wording of individual employment contracts. Therefore, it would seem that it cannot be imposed on employees and they would need to be in agreement to be furloughed.

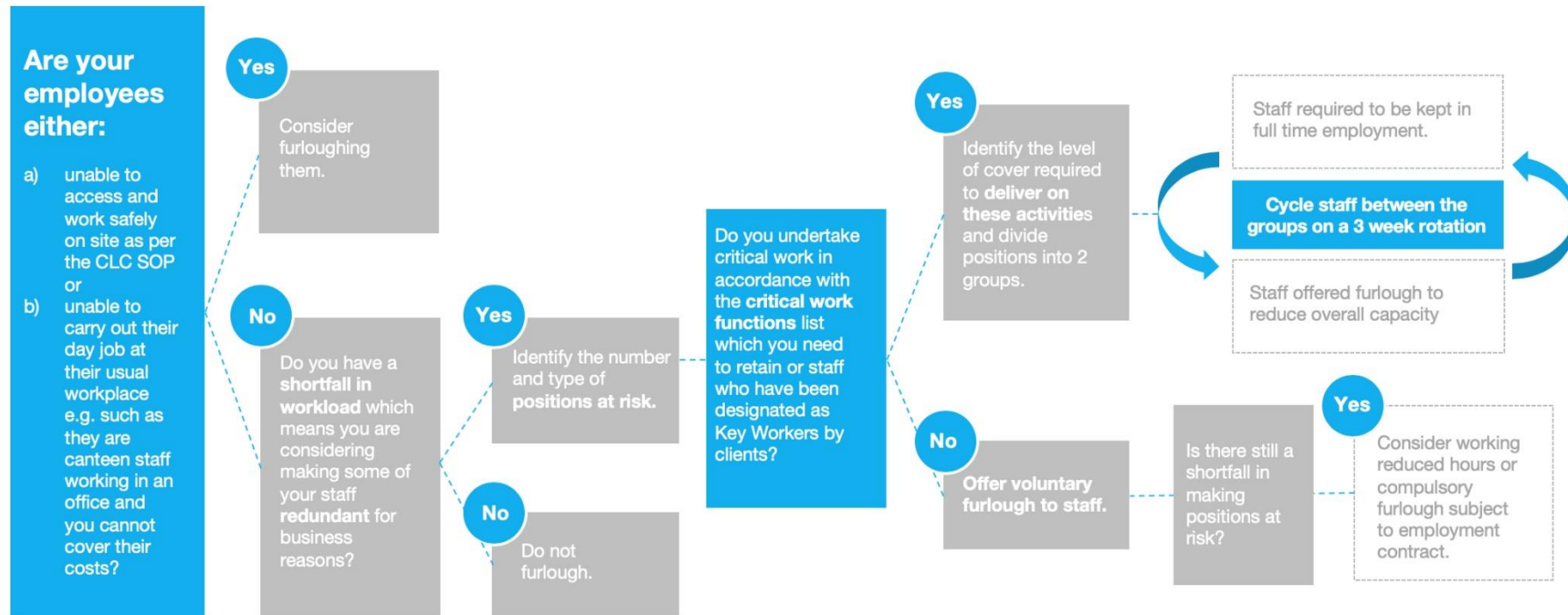
This means the scheme does not give employers an automatic right to stop their employees from working and to expect the Government to pick up the salary costs. However, if employees do not agree to be furloughed, employers can dismiss by reason of redundancy if definitions are met and a proper process followed.

2. The scheme applies only to employees who can no longer work or those who would otherwise have been laid off during this crisis. In instances where an employee could be redeployed/moved to carry on other duties within the business, it will not apply.
3. In instances where employers have already commenced redundancy processes, the question remains whether they should delay those processes while the scheme is running. The Government has made it clear that its aim is to prevent mass redundancies. It would therefore appear risky to continue with redundancy processes while the scheme is operating.

Employers should consider discussing the scheme with ‘at risk’ employees as part of the consultation process and agree to either carry on with the redundancy process (recognising the risks associated with it) or agree to use the scheme as an alternative.

4. Some employers may have already introduced policies such as reduced hours or short-time working linked to the COVID-19 crisis. These employers may need to consider whether they can renegotiate with employees and potentially agree new terms making use of the scheme.
5. It would appear that an employee is not restricted from taking on other work or working for multiple employers while under the scheme. Current guidance states that if an employee has more than one employer they can be furloughed for each job as each job is separate the cap applies to each employer individually.

When should I use the scheme?



FAQs

Which employees can be furloughed under the Coronavirus Job Retention Scheme?

The scheme covers employees on any type of contract, who were on their employers' payroll on 28 February 2020. It includes full-time and part-time employees, employees on flexible or zero contracts and on agency contracts.

The scheme also covers employees who have been made redundant since 28 February 2020, if they are rehired by their employer.

Can employees work for the employer when furloughed?

To qualify for the scheme, employees must not undertake work for the employer while furloughed. Wages of employees working a reduced schedule due to the pandemic are not covered.

The employee must not work for the employer at all during the furlough period. A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Can employees undertake training when furloughed?

The employee must not work for the employer at all during the furlough period. A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Is the amount an employer pays net or gross up to £2,500?

HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage.

The employee's wage will be subject to usual income tax and other deductions.

How does an employer work out how much grant they will receive?

For full time and part time salaried employees, the employee's actual salary before tax, as of 28 February should be used to calculate the 80%. Fees, commission and bonuses should not be included.

For employees whose pay varies, the following applies:

- If the employee has been employed for a full twelve months prior to the claim, you can claim for the higher of either: the same month's earning from the previous year or average monthly earnings from the 2019-20 tax year.
- If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.
- If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

What should an employer do about pension contributions for a furloughed worker - do these stop?

HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage.

Can employers be selective to which members of staff receive a salary top-up?

The Government has confirmed that employers may choose to top up employees' salaries if they wish. A consistent approach to paying top up to staff is recommended however in order to avoid claims of unfair treatment - for example treating employees differently because of their gender, age, disability or other protected characteristics.

Due to the fact that many employers will have greatly reduced income over the coming months, with no clarity as to when the crisis will end, it may be prudent to include a right to amend or to choose not to top-up in later months, should circumstances dictate.

Does a contractor qualify for the Job Retention Scheme if the industry is being told to continue working?

The Coronavirus Job Retention Scheme has been introduced to support businesses and to prevent redundancies from the impact of COVID-19. Despite the industry being advised to continue working where possible in line with the CLC Site Operating Procedures if individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work.

Will a contractor only qualify once work has to cease because of supply shortages or the business runs into financial difficulties because clients withhold payment?

The scheme is intended to support employers who cannot cover staff costs due to COVID-19, in order to avoid redundancies. If individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work. It is not clear in the guidance but HMRC may in future require evidence of revenue shortfall.

Current guidance states that all UK businesses are eligible as long as they:

- Designate affected employees as 'furloughed workers'.
- Notify those employees of this change – changing the status of employees is subject to existing employment law and employment contracts.

What happens to employees that are off sick?

Employees on sick leave or self-isolating should get Statutory Sick Pay or Contractual Pay depending on the terms of their contract but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough.

When will companies receive the money?

HMRC is working to get the new online portal that supports the scheme up and running. We understand that they are building the system from scratch. We expect the first grants to be paid within weeks and before the end of April and backdated to the start of the furlough period for the employee.

Can employees take holidays if they are furloughed?

The Government has made it clear that designating an employee as a "furloughed worker" remains subject to existing employment law and individual contracts which means that they will continue to accrue annual leave during the furloughed period, in-line with their contract.

Employees could be encouraged to continue to take annual leave whilst working from home if necessary for health and safety arguments for having periods of rest from work. However, the introduction of The Working Time (Coronavirus) (Amendment) Regulations 2020, which allows for carry over of annual leave, would suggest that it would be difficult to force an employee to take annual leave.

What amendments have been introduced by The Working Time (Coronavirus) (Amendment) Regulations 2020?

In order to regulate what are extremely difficult working times, several new employment regulations related to coronavirus have been rapidly introduced.

The new regulations allow for annual leave to be carried over and to be taken in the next two leave years. Previously the Working Time Regulations 1998 had provided that at least four weeks of the statutory minimum 5.6 weeks leave had to be taken in the current leave year or it would be lost.

The amending regulations will remove the burden on businesses that would have otherwise had to ensure that workers take at least four weeks leave during a time which would not be convenient to either the individual or the employer.

Do the new “roll over” rules apply to all employees, those covered by the working time directive or key workers?

Although the Chancellor specifically mentioned key workers when announcing this measure, all employers are subject to the Working Time Regulations 1998, and thus will be subject to the changes in the Working Time (Coronavirus) (Amendment) Regulations 2020.

Can an employer re-hire a former employee and furlough them?

Employers are able to re-employ former employees made redundant after 28 February and place them on furlough. They will be able to claim 80% of the employee's monthly wages, up to a monthly cap of £2,500.

Employers can also agree to re-employ former employees who left voluntarily after 28 February e.g. for a new job and place them on furlough. They will be able to claim 80% of the employee's monthly wages, up to a monthly cap of £2,500.

Coronavirus Self-employment Income Support Scheme

The Coronavirus Self-employment Income Support Scheme (SEISS) which will cover the three-month period from March 2020, but may be extended if necessary, is expected to be operational at the beginning of June. It will see self-employed workers receive up to 80% of profits lost because of disruption to their businesses caused by the coronavirus outbreak.

Similarly to the **Coronavirus Job Retention Scheme** which was announced earlier by the Government for employed workers, the amount will be capped at £2,500 per month.

More information and full government guidance of the SEISS [can be found at gov.uk](https://www.gov.uk).

Who is eligible?

A self-employed worker or a member of a partnership with lost trading/partnership profits due to COVID-19. Individuals:

- With trading profits of less than £50,000 and more than half of total income from self-employment.
- Who have filed a tax return for 2018-19 as self-employed or a member of a trading partnership, including those who have not yet filed for 2018 to 2019, given until 23 April 2020 to do so.
- Traded in 2019 to 2020 or trading at the point of application (or would be except for COVID-19) and intend to continue to trade in the tax year 2020 to 2021.

What period can be claimed for?

The grants, which will be taxable, will cover March to May 2020 and will be paid in a lump sum. HMRC will use the average profits from tax returns in 2016 to 2017, 2017 to 2018, and 2018 to 2019, to calculate the size of the grant.

How will the funds be accessed?

Grants can be accessed via an online portal. Individuals interested in the scheme have been requested not to contact HMRC who will use existing information to check potential eligibility and invite applications once the scheme is operational.

When will the funds be available?

The scheme is being designed by HMRC from scratch and will start to be paid at the beginning of June.