

# HMRC issue further guidance on the Coronavirus Job retention Scheme ('JRS')

9 April 2020

## Under the JRS, the UK Government will fund part of the employment costs of workers who are 'furloughed' due to the COVID-19 outbreak.

The JRS was introduced to support employers whose operations are severely affected by the COVID-19 outbreak, and who cannot maintain their current workforce. The precise circumstances in which an employer can put employees on furlough leave and claim reimbursement through the JRS remains unclear and, without further guidance, businesses may need to use their best judgement to decide whether the scheme is appropriate for them.

HMRC will pay participating employers 80 percent of a 'furloughed worker's' pay (subject to a maximum payment of £2,500 per month) plus the associated employers' NIC and minimum employer pension contributions (but not any associated Apprenticeship Levy). The JRS will operate from 1 March to 31 May 2020 and may be extended. HMRC announced that the online portal for applications to the JRS will open on 20 April and they expect to start issuing payments by the end of the month.

### Who can participate in the JRS?

Any employer that operated a PAYE scheme on 28 February 2020, is enrolled for PAYE Online, and has a UK bank account can access the JRS.

Employees and other individuals paid subject to PAYE, such as officeholders and 'workers' who are not employees, who were on the payroll on 28 February 2020 can be furloughed provided they:

- Were not on unpaid leave on 28 February 2020; and
- Are not receiving Statutory Sick Pay.

Individuals who were made redundant or who had 'stopped working' for their employer after 28 February can be 're-employed' and then furloughed to preserve their job. The wording of this part is unfortunate. The reference to backdating claims to those who had 'stopped working' suggests employers can claim the grant for employees who had agreed to unpaid leave or leave on reduced pay, but were not actually dismissed as redundant. However, the reference to 're-employ', suggests that there must have been a dismissal. Clarification is needed over this important aspect of the grant.

HMRC's updated guidance specifically confirms that individuals can be furloughed if they are 'shielding' in line with public health guidelines and cannot work from home (or need to stay home with someone who is shielding). Individuals with COVID-19 related caring responsibilities (e.g. childcare due to school closures) may also be furloughed. This is an important extension to the scheme, aimed at some of the practical difficulties many are facing.

Furloughed employees cannot undertake any work for the employer, and so the JRS cannot be used to meet part of the employment costs of individuals who continue to work reduced hours. However, furloughed workers can undertake a new or existing employment with an unconnected employer, as long as their contract of employment permits it.

Workers must be furloughed for a minimum of three consecutive weeks, but can be furloughed more than once while the JRS runs.

### How are employees 'furloughed'?

An employer can furlough some or all of its eligible workers with their agreement. This is done by designating them as 'furloughed' in writing and notifying HMRC through a new online portal (expected to be available by the end of April). The 4 April guidance makes it clear that there must be a written record of the agreement, which must be retained for five years.

Normal employment law principles apply, including contractual requirements, anti-discrimination and consultation legislation. Mandatory collective consultation of 30 or 45 days in GB, and up to 90 days in NI, may be triggered depending on the number of affected employees. The COVID-19 outbreak might constitute 'special circumstances' meaning those time periods may not apply (and agreement may be reached more quickly), but this is currently unclear. Furloughed workers retain their existing employment rights and continuity of employment.

The employer must pay the furloughed worker the lower of 80 percent of their reference pay and £2,500 per month, subject to the usual payroll deductions. The employer may, but is not obliged, to top up this payment.

### What are the practical points?

For full and part time salaried employees, the grant will be based on their actual salary, before tax, as of 28 February.

For employees with variable pay, their reference pay is the higher of the:

- Average monthly pay for the 2019/20 tax year; and
- Pay from the same month in the prior year.

Reference pay includes regular mandatory payments such as wages, overtime, fees and compulsory commission. Discretionary payments – such as bonuses and tips – and the cost of benefits in kind are excluded.

Whilst further guidance on compiling claims data will be issued shortly, live testing of the system with selected employers has already started. The system will focus on

self-service as much as possible. The online portal will be accessible from 20 April on a 24-hour basis and can process up to 450,000 claims per hour, so HMRC is confident they will be able to deal with the expected volume of claims.

Payments will be made before 30 April 2020 for employers who make claims promptly and should be in the bank within 4-6 working days from the time of claim. If necessary, to facilitate payroll payments, employers can also submit a claim 14 days in advance of running their payroll.

Businesses, and agents that are authorised to act on behalf of clients for PAYE matters, will be able to submit JRS claims. However, file only agents, including Payroll Bureaux, will not be able access the service due to data protection reasons. Businesses that outsource their payroll operation to a bureau may not have activated their PAYE online account and, given this process can take up to 10 days, we recommend clients confirm this position to avoid any undue delay in submitting claims.

Employers should consider, with employee agreement, postponing all statutory holidays until after furloughing has ceased to avoid any possibility of breaking furlough conditions and potentially losing entitlement to the grant for that period.

During and after the furlough period, if employees cannot return to their duties, redundancy may be considered.

### Enforcement

HMRC's focus on enforcement matters is perhaps inevitable given recent surveys which suggested a much greater likely take-up of the JRS than anticipated by the Treasury. As a result HMRC have outlined the following measures to ensure the JRS is directed as the Treasury intended;

- There will be a hotline for employees who feel that the scheme is being abused (e.g. if their employer still requires them to work during furlough);
- HMRC will clawback JRS payments in cases where the criteria are not met, and depending on the nature

of the behaviours could take criminal action if there is deliberate action to defraud;

- HMRC will have the right to inspect records at a later date – the downstream review approach is still to be decided;
- The 28 February cut-off date is a key protection against fraud, as is the online authentication process for existing employers.

Whilst not strictly an enforcement point, HMRC commented several times within the recent Treasury Select Committee meeting that the JRS is intended to protect employees who would otherwise have been made redundant. The published guidance confirms that the scheme is designed for those whose operations are 'severely affected' by COVID-19 and are unable to maintain their current workforce. Given HMRC's statements on interpretation, and in the absence of any additional practical guidance to measure "severe affect", we would advise employers retain sufficient contemporary evidence of the impact to their business operations to support the basis on which a JRS claim was made.

### KPMG comments

The updated guidance published on 9 April, together with additional confirmations provided by HMRC at the Treasury Select Committee meeting on 8 April, clarifies a number of points relating to the JRS.

HMRC has not issued guidance on when the outbreak's effects on a business's operations will be regarded as 'severe'. Employers will therefore need to use their judgement in determining whether the JRS is intended for their circumstances.

As expected, HMRC have confirmed they reserve the right to audit retrospectively so employers will need to take care when submitting claims.

The first claims should start to be paid by the end of April. In the meantime, employers may be able to access funding through other Government cash flow bridge options.

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