

On the afternoon of 15 April 2020, the government released yet another version of the guidance for [employers](#) and [employees](#) on the Coronavirus Job Retention Scheme (the Scheme). The Chancellor also issued a "[Treasury Direction](#)," which sets out the legal framework for the Scheme and makes it clear that HMRC is responsible for the payment and management of amounts to be paid under the scheme. So what have we learned today?

Key points for employers in the updated employer guidance are:

- **Cut-off date extended to 19 March 2020:** Previous guidance about the Scheme stated that in order to qualify, employees had to be employed on 28 February. This date has changed to 19 March (the day before the Scheme was announced), meaning that potentially thousands more employees can be furloughed. The updated guidance states that employers can only claim for employees that were on the payroll on or before 19 March and which were notified to HMRC on a RTI (Real Time Information) submission on or before 19 March. This is an important change and reflects the pressure that the government was under to support individuals not previously covered by the Scheme. The updated guidance goes on to say that those employees who were employed as of 28 February, but who were made redundant or stopped working for their employer after this date but before 19 March, can still qualify for the Scheme if their employer re-employs them and puts them on furlough. This is the case even if their employer does not re-employ them until after 19 March.
- **TUPE transfers:** If a TUPE transfer takes place after 19 March, the transferee will be eligible to claim under the Scheme even though the incoming employees were not on its payroll as at 19 March. For transfers that took place before this date, the transferee should be eligible to claim because the employees in question would have been on its payroll by 19 March 2020, and so would be covered.
- **Employees on unpaid leave:** The latest version of the guidance involves some tweaks to this category of individual. It now says that if an employee started unpaid leave after 28 February, their employer can put them on furlough. However, if the employee went on unpaid leave on or before that date, e.g. on a sabbatical, the employer cannot furlough them until the date on which it was agreed they would return from unpaid leave.
- **Logistics of making a claim:** The updated guidance includes more information on how employers should make a claim under the Scheme. If you have fewer than 100 furloughed staff, then you will be expected to enter details for each employee individually into the new system. For 100 or more staff, it will be a case of uploading the information to the Scheme via a file, rather than inputting the information directly into the system.

The Treasury Direction is effectively "the law" that will govern the operation of the Scheme. It is very technical in parts and includes what appears to be a wholly disproportionate amount of information about how members of an LLP should be treated. It also confirms many of the points already covered in the various earlier iterations of the guidance, including which employers will be eligible to make a claim, what costs they can recover, who counts as a "furloughed employee," etc.

Key points for employers to note include:

- **Purpose of the Scheme:** It says that the purpose of the scheme is to "provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of furloughed employees arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease". Rising above the rather clumsy drafting, it seems to put to bed previous concerns that employers may have to demonstrate they are in dire financial circumstances or need to make redundancies to be eligible to make a claim under the Scheme. This is further supported by the definition of a furloughed employee later on in the document being someone who is placed on furlough **by reason of circumstances arising as a result of coronavirus or coronavirus disease**.
- **Furloughed employees:** The Treasury Direction includes quite detailed information about who qualifies as a furloughed employee for the purposes of the Scheme. For example, it makes it clear that directors will only be permitted to carry out very limited duties if they are to be eligible under the Scheme, e.g. duties relating to the filing of accounts.
- **Wage costs:** Only "regular salary or wages" should be taken into account when calculating the wage costs that are covered by the Scheme. In very simple terms, this would exclude, for example, benefits in kind, payments that are conditional on something else, or those that are discretionary. Disconcertingly, there is now no mention of the "compulsory commissions" and "past overtime" referred to in the earlier guidance as also claimable.

We appreciate that many employers have already furloughed staff under the Job Retention Scheme or are currently contemplating doing so. If you have any questions about the operation of the Scheme and the implications for your business, please speak to your usual contact in the Labour & Employment team.

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