



# COVID-19 RESPONSE

In partnership with [A&L Goodbody](#)

# Covid-19: Job Retention

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Gareth Walls & Jonathan Simpson

Guidance in this presentation is correct at date of publication

**A&L Goodbody**

Invest  
**Northern  
Ireland**

The logo for Invest Northern Ireland, featuring a stylized teal flower or sunburst icon above the text.

# What we will cover

Overview of the Job  
Retention Scheme  
& Eligibility

Potential alternative  
options and support



Key Business  
Concerns

How to 'Furlough'  
Workers

# Job Retention Scheme

## Overview and eligibility

# Overview

- Temporary Scheme designed to encourage employers considering redundancies or lay-off to retain employees on their payroll and to ‘furlough’ them instead.
- Available for all UK organisations with employees on PAYE.
- Currently anticipated that the Scheme will run for three months from 1 March 2020.
- It will be accessed via an HMRC “Portal”.



## What can you claim?

- Employers will be able to access grants of 80% of wages up to a cap of £2,500 per month in relation to each furloughed worker.
- In addition Employers can claim Employer National Insurance contributions and minimum automatic enrolment employer pension contributions (on the subsidised wage).
- Wages, past overtime, fees and compulsory commission are included. Fees, commission payments, bonuses and BIKs should not be included.
- Claims can be back dated to 1 March if applicable.
- While on furlough, the employee's wage will be subject to usual income tax and other deductions.
- Employers can choose to 'top up' salary payments with the additional 20% but do not have to.

## What can you claim?

- How is 80% of wages calculated for employees whose pay varies?  
For those employees whose pay varies, the employer can use the following reference periods and can claim for the higher of:
  - the same month's earning from the previous year (for example earnings from March 2019); or
  - average monthly earnings in the 2019-20 tax year.
- This is likely to be applicable to Casual Workers as long as they are paid through PAYE.

## When can you claim?



The online service you'll use to claim is not available yet.  
We expect it to be available by the end of April 2020.

### ...and what should you do in the meantime?

- Coronavirus Business Interruption Loan Scheme
- Grant funding (where available)
- Cash reserves
- Defer salary payments?



## Eligibility

- Businesses must have started a PAYE payroll scheme on or before 28 February 2020.
- Claims can be made only for those employed via PAYE:
  - Full-time & part-time employees
  - Employees on agency contracts (claims are made by the agency)
  - Zero hours/Casual workers
- Claims can also be made for office holders (including company directors), salaried members of Limited Liability Partnerships & “limb (b) workers” paid via PAYE.

# Eligibility

- The Scheme also covers employees who have left their employment with a business (for any reason) after 28 February 2020 if they are rehired.
- When on furlough an employee cannot undertake work for or on behalf of the organisation.
- Employees hired after **28 February 2020** cannot be furloughed.
- The **minimum** length of time an employee can be furloughed is **3 weeks**.

# How to 'Furlough' Workers

## Do you need an employee's consent?

- Employment law rules governing contracts of employment are not overridden by the Scheme.
- Any decision to designate an employee as furloughed and reduce their pay must be made by agreement.
- In most cases express written consent must be obtained to avoid claims of unlawful deduction from wages.
- Notice of Furlough: Guidance states that employers must have written to their employees confirming that they have been furloughed. A record of this communication must be kept for five years.
- Guidance also suggests that in some cases it may be necessary to “collectively consult” with trade unions or employee representatives to achieve agreement to changes to terms of employment.

# How to select which employees to furlough?

- In some cases this will be simple where there is a large scale shutdown.
- Where operations are only being reduced fair & reasonable selection criteria should be applied.
- Equality & discrimination laws will apply as normal.
- Prioritising vulnerable workers is unlikely to be discrimination.



# Key Concerns for Employers

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- **Can we rotate employees on furlough?**
  - The minimum period for which an employee can be furloughed is 3 consecutive weeks.
  - It is possible to take employees off furlough and then re-designate them as furloughed again on a 3-weekly (or more) basis.
- **What if an employees refuses to be placed on furlough?**
  - By definition the employer is facing the prospect of compulsory redundancy or lay-off. If the employee is not prepared to consent to this scheme, then lay-off or compulsory redundancy may be considered.

# Key Concerns for Employers

- **What about employees on unpaid leave, sick leave, self-isolating or shielding?**
  - Those on unpaid leave are not eligible unless they were placed on unpaid leave after 28 February 2020.
  - Those on sick leave or self-isolating should be eligible for SSP. They can then be furloughed for any period after they would otherwise have returned to work.
  - Employees 'shielding' (or who need to stay home with someone who is shielding) in line with public health guidance can be placed on furlough.
- **What about employees on (or about to go on) maternity, paternity, adoption or shared parental leave?**
  - The normal rules on statutory leave and pay will still apply. Employers will therefore need to ensure they continue to pay no less than the relevant statutory pay.
  - Employers can claim through the scheme for any enhanced, contractual pay for employees who qualify for the relevant statutory pay.



# Key Concerns for Employers

- **What if 80% of wages is below National Minimum Wage?**
  - Individuals are only entitled to the National Minimum Wage (NMW) for hours they work.
  - Furloughed workers, can be paid 80% of their salary (up to £2,500) even if this would be below NMW based on usual working hours.
- **What if employees take up a second job during Furlough?**
  - This is fine if the employee is permitted to hold another job under their contract.
  - Contracts will usually govern employees holding a second job and will remain in force during Furlough.
- **Can employees volunteer or undertake training?**
  - Yes, as long as it does not provide services to or generate revenue for, or on behalf of the business.
  - Note: if workers are required to complete online training courses whilst they are furloughed, then they must be paid at least NMW.

# Key Concerns for Employers

- **What about self-employed consultants and other service providers?**
  - This scheme will not apply to these categories of workers, but they may be eligible to apply for support under the Coronavirus Self-employment Income Support Scheme.
- **What about director-shareholders paid partly or mainly in dividends?**
  - The scheme is based on PAYE earnings only. So, it will not apply to dividend payments.

# Key Concerns for Employers

- **Does annual leave accrue during furlough and can employees be required to use up annual leave?**
  - Employees will continue to accrue annual leave during furlough.
  - Guidance is unclear on whether employees can elect to take holiday or be required to take holiday during furlough.
  - In general it is possible for employers to require an employee to take holiday at a certain time as long it gives the notice required under the Working Time Regulations.
  - NOTE: Regulations have been introduced in the UK allowing up to 4 weeks unused leave to be carried into the next 2 leave years, easing the potential impact of a workforce with a significant amount of annual leave to take after the crisis (these will be replicated in NI).

# Key Concerns for Employers

- **What happens when the government ends the Scheme?**
  - When the government ends the scheme, you must make a decision, depending on your circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider redundancies.
  - You may wish to start any redundancy consultation process in advance of the Scheme ending, particularly if collective consultation obligations will be triggered.
  - Grants under the Scheme cannot be used to substitute redundancy payments.

# Alternative options & other support

# Options

- Working From Home (this will already have been implemented where possible in most cases).
- Short-time working – reducing hours and pay.
  - This not presently covered under the Job Retention Scheme.
  - Where no contractual provision, consent should be sought.
- Redundancies
  - These should be approached with extreme caution – could be difficult to avoid unfair dismissal if it would have been reasonable to place employees on furlough.
  - Consultation should take place if likely after Furlough ends.
- Business interruption loans & grants to provide cash flow in interim.

# Coronavirus Self-employment Income Support Scheme

- This scheme applies if you're self-employed or a member of a partnership.
- Grants will be based on 80% of average profits from the last three years, subject to a cap of £2,500 per month.
- Profits must be less than £50,000 per annum and must constitute more than half of average taxable income.
- Payments unlikely to materialize until June, backdated to March and will be taxable.
- HMRC will administer the scheme and contact eligible individuals for a form to complete.
- It does not cover those who pay themselves salary and dividends through a Personal Service Company.

# Support and signposting

**IF CORONAVIRUS AFFECTS YOUR BUSINESS HELP IS AVAILABLE**

For advice, visit  
[www.nibusinessinfo.co.uk/coronavirus](http://www.nibusinessinfo.co.uk/coronavirus)

A&L Goodbody People Services Careers Offices

WELCOME

## COVID-19 (Coronavirus)

With circumstances surrounding COVID-19 evolving daily, we are very aware of the challenges for our people, clients and business community in Northern Ireland.

Our multi-disciplinary teams have been actively monitoring developments across all sectors & have provided practical legal guidance & latest thinking in a dedicated Northern Ireland COVID-19 Hub.

VISIT HUB

**WEBINAR:  
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# Questions