

COVID 19 (Coronavirus)

Coronavirus Job Retention Scheme for Furloughed Workers - FAQs

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What is the Coronavirus Job Retention Scheme?

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers starting from 1 March 2020. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19). An updated scheme starts on 1 July 2020 and will continue until 31 October 2020. The updated scheme includes some key changes:

1. From 1 July, the scheme is closed to new employers i.e. only employers who had previously furloughed workers for a three-week period can furlough employees for the duration of the updated scheme (the only exceptions are those returning from parental leave or parental bereavement leave, armed forces reservists or those newly TUPE'd;
2. From 1 July 2020, employers can furlough employees on a flexible basis. There is no minimum furlough period though the minimum furlough claim period is seven days;
3. From August employers will be expected to share the cost of the furloughing their workers as follows:
 - a. From 1 August the government will stop paying the employers' national insurance contributions and employers' pension contributions so employers will have to pick up these costs;
 - b. From 1 September, the government's wage subsidy for furloughed hours will reduce to 70% of the employee's pay (though the employee will still be entitled to 80% of their pay for furloughed hours)
 - c. From 1 October the government's wage subsidy will reduce to 60%.

The government published a third written direction on 25 June and updated guidance on 1 July.

Government guidance

These FAQs cover a range of issues asked about the job retention scheme. The rules of the scheme and the policy behind the scheme are set out in three Treasury Directions and a number of government guidance documents (some of which have been updated multiple times since first published):

1. A [Third Direction](#) which sets out the formal rules for the operation of the updated scheme. This Direction builds on earlier directions published on 15 April and 20 May.
2. [Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme](#). If your employees want more information on furlough you can direct them to [Check if your employer can claim your wages through the Coronavirus Job Retention Scheme](#).
3. [Check which employees you can furlough](#).
4. [Calculate how much you can claim through Coronavirus Job Retention Scheme](#). This is supplemented by [Examples of how to calculate your employees' wages, National Insurance contributions and pensions contributions](#) and [Example of how to calculate the amount you should claim for an employee who is flexibly furloughed](#).
5. [Steps to take before calculating your claim using the Coronavirus Job Retention Scheme](#).
6. [Reporting employees' wages to HMRC when you've claimed through the Coronavirus Job Retention Scheme](#).
7. [Government factsheet on changes to the Coronavirus Job Retention Scheme](#) (page 1 of the factsheet covers the Self-employment income support scheme)
8. Separately, government also produced guidance for businesses working in the public sector, see also [Public Procurement Notice 02/20 Supplier Relief due to COVID-19](#). This scheme will finish on 30 June but will be replaced by another scheme running to the end of October. See [Public Procurement Notice 04/20 Supplier Relief due to Covid-19](#).
9. For agencies supplying schools see section 12 of [Actions for Schools during the coronavirus outbreak](#).
10. [Detailed guidance on holiday leave during furlough](#) (published 13 May).

These FAQs do not cover the [separate scheme for self-employed people](#).

NOTE: Though the guidance documents use the terms 'employer', 'employee' and 'contract of employment', it is clear that scheme also applies to agency workers and that employment businesses (and umbrella companies) can access the scheme grant for agency workers' pay. REC has prepared an infographic '[the Coronavirus Job Retention Scheme: information for temporary workers](#)' (at the time of writing this has not been updated to reflect the changes in the furlough scheme).

More information on coronavirus

We appreciate that it has been very difficult for members to manage their businesses while constantly waiting for more information about this scheme. We are constantly working with government so that we can ensure that the interests of the recruitment sector are represented and to obtain as much detail as possible to keep our members updated. However, this type of scheme is unprecedented.

We have provided as much information in this guidance as we can. As soon as any further information is provided by government, we will update this information on the [REC Coronavirus Hub](#).

All hyperlinks and references to guidance are correct at the time of publication.

REC documents have been prepared exclusively for REC Corporate Members. You must not distribute these documents to third parties except where you require them to complete the document.

Frequently asked questions

In the following pages you will find a number of recruitment specific questions on the Coronavirus Job Retention Scheme. This is REC's analysis of the scheme based on HMRC's guidance and our continued discussions with government. The scheme rules are set out in three written directions published by HM Treasury on 15 April, 20 May and 25 June. These are supplemented by HMRC's guidance which is regularly updated.

Note: The scheme must interact with worker rights including for example, holiday leave and pay. Whilst it may be easier to understand some of these interactions for salaried employees, it is much more difficult to do so when it comes to temporary workers with atypical working patterns. These are potentially quite difficult to resolve as, aside from the Treasury Directions, there is no legislation to back up the scheme or HMRC's guidance. In this section we answer some of the more frequently asked questions so far as we can - there are some outstanding questions which we will answer as and when we get more guidance from government.

Topics covered:

1. What is the furlough scheme?
2. Who can be furloughed?
3. How to furlough workers
4. Timing for the furlough scheme
5. Holiday leave during furlough
6. Interaction with the AWR
7. What does the furlough grant cover?
8. The claims process
9. Getting it wrong - HMRC powers to reclaim the grant

1.	What is the furlough scheme?
1.1	<p>The Coronavirus Job Retention Scheme is an emergency scheme set up by the government to support employers with the costs of employing their workers during the coronavirus pandemic. The scheme was announced on 1 March 2020 and was initially intended to last for three months. However, it has been extended twice and will now continue until 31 October 2020.</p> <p>Other changes announced:</p> <ul style="list-style-type: none"> • Workers can be furloughed on a part-time basis; • The scheme closed to new entrants from 30 June (in practice this means 10 June in order to meet the three-week minimum furlough requirements); • From August employers will have to share the cost of furloughing their workers (see question 7.1 for detail). <p>The scheme is administered by HMRC. Employers claim the furlough grant through an online portal, using their PAYE reference.</p> <p>The rules of the scheme are set out in the Treasury's third Written Direction to HMRC dated 25 June 2020. The Direction is supplemented by a range of guidance (hyperlinks throughout this document).</p>

	<p>In summary, if the employer furloughs an employee, s/he remains an employee for the furlough period. The government will pay the employer 80% of the employee's usual earnings (up to a maximum of £2500 per month) for the furlough period. The government subsidy will reduce to 70% and 60% in September and October respectively, though the employee will still be entitled to receive 80% of their pay (subject to the maximum of £2500).</p>
2.	Who can be furloughed?
2.1	<p>Does a worker have a right to be furloughed?</p> <p>No, a worker does not have a right to be furloughed. Government is keen to protect the jobs and incomes of as many workers as possible and so a wide range of workers can be furloughed but ultimately, it is a commercial decision for the employer/ agency whether to furlough or not. The following can all be furloughed:</p> <ul style="list-style-type: none"> • Employees • Temporary workers (working through agencies and umbrella companies) (see question 2.8) • Limited company contractors working in the public sector (who are subject to the off-payroll rules (IR35)) (see question 2.11) • Office holders • Workers who shielding in line with government guidance • Workers who have caring responsibilities • Company directors (see question 2.12) • Apprentices <p>Note that para 2.5 of the Direction clarifies that "No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purposes of CJRS".</p> <p>Government expectations: For businesses working in the public sector, see also Public Procurement Notices 02/20 Supplier Relief due to COVID-19 and 04/20. For agencies supplying schools see Actions for Schools during the coronavirus outbreak.</p> <p>Changes from 1 July 2020:</p> <ul style="list-style-type: none"> • The scheme closed to new entrants from 30 June. So from 1 July only employers who have previously furloughed workers for a full three-week period can furlough workers subject to an exception for: <ul style="list-style-type: none"> ○ those who were on parental leave * ○ armed forces reservists who had been called out for service beginning on or before 10 June and ending after 10 June (para 10.2 of the Third Direction) and ○ those who have been TUPE transferred to a new employer after 10 June. • The number of employees an employer can claim for in any claim period cannot exceed the maximum number they have claimed for under any previous claim (excluding any employees who have been newly furloughed following a period of parental leave, reservists who have returned from a period of action or those TUPE'd after 10 June). <p>* Parental leave includes maternity, shared parental, adoption, paternity or parental bereavement leave.</p>
2.2	Can agencies furlough temporary workers engaged on contracts for services?

	<p>Yes, agencies can furlough temporary workers engaged on contracts for services.</p> <p>The Directions and HMRC guidance documents use employment terminology such as employer, employee and contract of employment. However, for the purposes of the scheme, these terms do not require or imply that an individual is an employee for employment rights purposes. Rather they reflect the fact that HMRC are running the scheme, and the party furloughing the individual will be their employer for tax purposes. So, whilst a temporary worker on a contract for services may be a worker (rather than an employee) for employment rights purposes, they will be an employee for tax purposes and so are covered by the furlough scheme.</p> <p>REC has prepared an infographic 'the Coronavirus Job Retention Scheme: information for temporary workers' which you can give to temporary workers to explain the scheme to them (we will update this shortly to reflect the changes in the scheme).</p>
2.3	<p>What are the rules around furloughing?</p> <p>Firstly, in order to be able to furlough an employee, the employer must:</p> <ul style="list-style-type: none"> • Have created and started a PAYE payroll scheme on or before 19 March 2020 • Enrolled for PAYE online • Have a UK bank account • From 1 July, must have previously made a claim under the scheme (i.e. no new entrants from 1 July). <p>Para 10.1 of the Third Direction states that an employee is a flexibly furloughed employee if:</p> <ul style="list-style-type: none"> • The employee is a qualifying employee for the purposes of the scheme • The employer has instructed the employee to stop all work or not to work the full amount of their usual hours during a furlough claim period • The employee does not work or does not work their usual hours during a furlough claim period • The employer's instruction is given by reason of circumstances arising from coronavirus • There is an agreement between the employer and the employee about furlough. <p>Importantly, the reason the work has finished has to be because of coronavirus. Someone whose work has finished, but that was not related in any way to coronavirus cannot expect to be furloughed. Note that para 2.5 of the Direction clarifies that "<i>No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purposes of CJRS</i>".</p> <p>From 1 July employers can flexibly furlough their employees. From 1 August employers will have to bear an increasing proportion of the cost of furloughing their employees so some may choose at that point to bring more employees back on a part-time basis or to end furlough altogether.</p> <p>See also Check which employees you can furlough.</p>
2.4	<p>What does on payroll on 19 March 2020 mean?</p>

When the scheme was first announced, it was only available to pay the wages and wage costs of employees who were on the employer's payroll on 28 February. This was changed on 15 April so that employers can now claim for furloughed employees who were on their PAYE payroll on or before 19 March 2020 and which were notified to HMRC on an RTI submission on or before 19 March 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020. See below a table setting out who is and is not eligible to be furloughed (taken from [Check which employees you can furlough](#)).

Was the employee employed with you as of this date?	Date RTI submission notifying payment was made to HMRC	Eligible for CJRS?
28 February 2020	On or before 28 February 2020	Yes
28 February 2020	On or before 19 March 2020	Yes
28 February 2020	On or after 20 March 2020	No
19 March 2020	On or before 19 March 2020	Yes
19 March 2020	On or after 20 March 2020	No
On or after 20 March 2020	On or after 20 March 2020	No

Temps not on live assignment on 28 February or 19 March:

We repeatedly asked government what 'on payroll' means. Does it mean on live assignment or someone who has not been P45'd by either 28 February or 19 March? There are three possible scenarios, each with their own risk level:

1. If a worker last worked for an agency on December 2019 can they expect to be furloughed? They may be technically on the agency's payroll if they have not been P45'd but they have not lost their job because of coronavirus so have not been adversely affected by it, which is one of the requirements of the scheme (para 2.2 Third Direction). This is high risk and may fall foul of para 2.5 of the Direction which states that '*no CJRS claim should be made if it is abusive or otherwise contrary to the exceptional purpose of the CJRS*'.
2. A temporary worker may have worked regularly for the agency but just happened not to be on a live assignment on 28 February or 19 March. They may have expected to return to work but then the client no longer needed them because demand fell as a result of coronavirus. This is lower risk and would seem to come within the scope of the scheme.
3. The final scenario is a temporary worker on an ongoing long-term assignment, and working on 28 February or 19 March, but whose assignment was ended because the client no longer needed the temporary worker's services due to coronavirus. This is the lowest risk and appears to be in scope of the scheme.

2.5

What about employees who the employer had already made redundant?

Employees who were employed as of 28 February 2020 and on payroll (i.e. notified to HMRC on an RTI submission on or before 28 February) and were made redundant or stopped working for the employer after that and prior to 19 March 2020, can also qualify for the scheme if the employer re-employs them and puts them on furlough. However,

	<p>there is no obligation on the former employer to re-employ someone just so that they can furlough them. See Check which employees you can furlough for advice on employees who were previously made redundant.</p>
2.6	<p>Can an employer or agency furlough someone who is or was on sick leave or maternity leave?</p> <p>Sick pay: The scheme is not intended to cover short term sickness. If someone is sick or self-isolating as a result of coronavirus they may be able to claim statutory sick pay, provided they meet the relevant criteria. However, if an employer wants to furlough someone for business reasons, and they are off sick, the employer can furlough them (following the correct process) but the employee must not receive sick pay for any of the furlough leave period.</p> <p>If a worker is on furlough, but then becomes sick, it is up to the employer whether to move the worker onto sick pay or keep them on furlough. Again, a worker is not entitled to receive both furlough pay and sick pay at the same time.</p> <p>Maternity/adoption/paternity/shared parental leave and parental bereavement leave: The furlough grant cannot be used to pay for any statutory maternity, adoption, paternity, shared parental leave or parental bereavement leave. However, if an employee is contractually entitled to more than the statutory entitlement, the furlough grant can cover that top up.</p> <p>Update 01.07.20: The scheme is now closed to new entrants so from now, employers cannot furlough any workers they have not previously furloughed. However there are exceptions for those who have been (a) on parental leave on or before 10 June and returned after 10 June, (b) armed forces reservists called up for action on or before 10 June and who returned to work after 10 June and (c) those newly TUPE'd after 10 June, all subject to the other requirements of the scheme.</p> <p>See Check which employees you can furlough.</p>
2.7	<p>What about employees on fixed term contracts?</p> <p>Yes, an employer can furlough an employee on a fixed term contract, provided the contract has not already finished, in which case, the employer can renew or extend the contract and then furlough the worker without breaking the terms of the scheme. The guidance states that "<i>Fixed term contracts which ended, without extension or renewal, on or before 19 March 2020 will not qualify for the grant once they have ended</i>".</p> <p>See Check which employees you can furlough.</p>
2.8	<p>Who is responsible for furloughing a temporary worker who works through an umbrella company?</p> <p>See Check which employees you can furlough.</p> <ul style="list-style-type: none"> • If a temporary worker is on the payroll of an umbrella company, the umbrella company is the 'employer' for the purpose of the scheme. • It is up to the umbrella company whether to furlough the temporary worker, or not.
2.9	<p>What if the umbrella company refuses to furlough the worker?</p>

	<ul style="list-style-type: none"> Employers are not under any obligation to place employees/temporary workers on furlough. If the umbrella company is the employer, then it can decide whether to furlough an employee/temporary worker or not. As the scheme changes in the coming months, and the costs of furloughing employees pass more to the employer, then it is likely that umbrellas will take some temporary workers off furlough. If an umbrella does decide to furlough workers, it cannot charge a fee from the furlough grant.
2.10	<p>Does the furlough scheme apply to those working through CIS intermediaries (in the construction sector?)</p> <p>None of the HMRC guidance documents refer to the CIS. However, in order to be able to rely on the retention scheme, a temporary worker must have been on payroll on 19 March 2020. The CIS scheme applies to individuals who are self-employed, whether working through their own PSC or as sole traders. Therefore, they are highly unlikely to appear on anyone's payroll and so cannot be furloughed by the agency, and cannot be paid through the scheme <u>unless</u> they are payrolled by the PSC (see question 2.11).</p> <p>There is a separate scheme for the self-employed which is outside the scope of this guidance.</p>
2.11	<p>Can an agency furlough limited company contractors?</p> <p>What about small enterprises who are paid by dividends so are not covered by the job retention scheme or any support about to be announced for the self-employed?</p> <ul style="list-style-type: none"> The scheme only applies to employers in respect of PAYE employees on their payroll. Therefore, a contractor who works through their own personal service company (PSC) cannot be furloughed by the engaging agency. However, the PSC may be able to furlough the contractor if the contractor is on the PSC's payroll (subject to the changes which apply from 1 July). For guidance regarding contractors on public sector engagements and who are within scope of the off-payroll working rules (IR35) see Check which employees you can furlough. There is a separate scheme for the self-employed which is outside the scope of this guidance.
2.12	<p>Can a company furlough its own directors?</p> <p>This will be of interest to agency owners.</p> <ul style="list-style-type: none"> Yes, company directors who are on the company's payroll can be furloughed but the furlough grant only applies to wages paid through PAYE. If a director also receives dividends, this is not covered by the furlough grant. Again, the scheme is now closed to new entrants. Business and directors will still have to comply with company law, and where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, i.e. they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.
3	How to furlough workers

<p>3.1</p>	<p>Does an employer have to have an agreement with an employee it wants to furlough?</p> <p>In brief, yes. Para 10.1(e) of the Third Direction requires the employer to have an agreement with the employee for the period during which the employer will claim the furlough grant. Para 13 elaborates on this and requires the following:</p> <ul style="list-style-type: none"> • The employer and employee must agree that the employee will either do no work for the employer or will not work the full amount of their usual hours • The agreement must set out the terms and conditions upon which the employee will do no work or work less than their usual hours • The agreement must: <ul style="list-style-type: none"> ○ be made before the beginning of the furlough period to which the claim relates ○ be incorporated either expressly or impliedly in the employee's contract ○ be in writing or confirmed in writing (which can include email *). • The employer must keep the agreement or confirmation of the agreement at least until 30 June 2025. <p>* The guidance adds that the employee does not have to respond to the employer.</p> <p>Remember that when deciding who to furlough you must continue to comply with equality law.</p>
<p>3.2</p>	<p>Has the REC produced any documents for agencies to use to furlough their workers? If yes, are these documents available to non-members?</p> <p>An employer can confirm that they are furloughing someone by email but the REC has prepared template documents for agencies to use with both their own employees and temporary workers. These include:</p> <ul style="list-style-type: none"> • a template furlough agreement • a template for flexible furlough • a letter to end furlough <p>Our legal templates are available only to REC members.</p>
<p>3.3</p>	<p>How long can I furlough an employee for?</p> <ul style="list-style-type: none"> • Until 30 June the minimum furlough period was three weeks. • From 1 July employers can furlough employees on a part-time basis, with no minimum period (though claims must be made for a minimum of seven days). • HMRC will continue to pay the subsidy for furloughed hours (subject to the reduction in subsidy over time and the changes regarding NICs and pension). Employers must pay for worked hours.
<p>3.4</p>	<p>How do I calculate hours for employees with fixed hours who are flexibly furloughed?</p> <p>The Third Direction includes a number of formulae for working out usual hours for fixed and variable hours workers, and then the related furlough grant. We recommend that agencies read the Direction alongside the guidance.</p>

	<p>For an employee with fixed hours and fixed monthly salary see Example of how to calculate the amount you should claim for an employee who is flexibly furloughed.</p> <p>We have taken the following text from Steps to take before calculating your claim using the Coronavirus Job Retention Scheme:</p> <p><i>Work out your employee's usual hours for an employee who is contracted for a fixed number of hours and whose pay does not vary according to the number of hours they work</i></p> <p><i>To calculate the number of usual hours for each pay period (or partial pay period):</i></p> <ol style="list-style-type: none"> 1. <i>Start with the hours your employee was contracted for at the end of the last pay period ending on or before 19 March 2020.</i> 2. <i>Divide by the number of calendar days in the repeating working pattern, including non-working days.</i> 3. <i>Multiply by the number of calendar days in the pay period (or partial pay period) you are claiming for.</i> 4. <i>Round up or down if the result isn't a whole number.</i> <p><i>If an employee with fixed hours was on annual leave, off work sick or on family related statutory leave at any time during the last pay period ending on or before 19 March, the usual hours should be calculated as if the employee had not taken that leave.</i></p> <p>Find examples of how to work out usual hours for employees who are contracted for a fixed number of hours.</p>
<p>3.5</p>	<p>How do I calculate the hours for temps furloughed on a part-time basis?</p> <p>Although employers will be able to furlough part-time from 1 July, this may prove to be quite complex for agencies and their temps. The key issue will be how to demonstrate what a temp's usual hours would have been in order to assess how much to claim in furlough grant.</p> <p>The text in the Third Direction on calculating hours and the grant sum to claim is quite complicated so we recommend reading that together with the relevant guidance, in particular see the worked examples in Examples of how to calculate your employees' wages, National Insurance contributions and pension contributions.</p> <p>We copy below an extract from Steps to take before calculating your claim using the Coronavirus Job Retention Scheme (it is quite long but worth copying in full).</p> <p><i>Work out your employee's usual hours for an employee who works variable hours</i></p> <p><i>Where the pay varies by the amount of time worked, you will have shown the number of hours worked on your employees' payslips in line with legislation introduced by BEIS in April 2019 (Employment Rights Act 1996, section 8). You are therefore likely to have records of the number of hours worked.</i></p> <p><i>Employers should identify the hours the employee worked using pay records, time sheets and other records which show time worked. If these aren't available then use</i></p>

other records, such as rotas or work diaries. If these records are not available, employers may use the pay rate to work back from gross pay.

The 'usual hours' for an employee who works variable hours will be calculated based on the higher of either:

- the average number of hours worked in the tax year 2019 to 2020
- the corresponding calendar period in the tax year 2019 to 2020

If your employee has variable pay you will complete a similar comparison to [calculate their usual wages](#) but the result may be different.

When you calculate the usual hours, you should include:

- any hours of leave for which the employee was paid their full contracted rate (such as annual leave)
- any hours worked as 'overtime', but only if the pay for those hours was [not discretionary](#)

If you are calculating the usual hours for an employee who is part of a flexible work time arrangement ("flexi-leave"), you should:

- not count hours as hours worked that the employee worked but was not paid for because they accrued paid time off which they could take later
- count the hours as hours worked that the employee took as paid time off, which they had accrued by working additional hours at some other time

To work out the usual hours for each pay period (or partial pay period) based on the average number of hours worked in the tax year 2019 to 2020:

1. Start with the number of hours actually worked (or on paid annual leave or flexi-leave) in the tax year 2019 to 2020 before the employee was furloughed, or the end of the tax year if earlier.
2. Divide by the number of calendar days the employee was employed by you in the tax year 2019 to 2020, up until the day before they were furloughed, or the end of the tax year if earlier.
3. Multiply by the number of calendar days in the pay period (or partial pay period) you are claiming for.
4. Round up or down if the result isn't a whole number.

When you calculate the number of calendar days in step 2, you should not count any calendar days where the employee was on a period of:

- statutory sick pay related leave
- family related statutory leave
- reduced rate paid leave following a period of statutory sick pay related leave
- reduced rate paid leave following a period of family related statutory leave

Find [examples of how to work out the average number of hours worked in the tax year 2019 to 2020 for an employee who works variable hours](#).

	<p>To work out the usual hours for a pay period or partial pay period based on the corresponding calendar period in the tax year 2019 to 2020:</p> <ol style="list-style-type: none"> 1. Identify the pay periods in the 2019 to 2020 tax year that correspond to at least one calendar day in the pay period (or partial pay period) you are claiming for. 2. If the pay period (or partial pay period) you are claiming for starts and ends on the same calendar days as the identified pay period in the tax year 2019 to 2020 - use the number of hours they actually worked in that pay period. 3. If the pay period (or partial pay period) you are claiming for does not start and end on the same calendar days as the identified pay periods in the tax year 2019 to 2020 - you'll need to add together a proportion of the hours worked in each of the pay periods you've identified. <p>Find an example of how to work out the usual hours worked in the same period last year for an employee who works variable hours and the pay period (or partial pay period) being claimed for starts and ends on the same calendar days as the identified pay period.</p> <p>If you have to work out the usual hours based on the hours worked in more than one pay period in the tax year 2019 to 2020:</p> <ol style="list-style-type: none"> 1. Start with the number of hours worked in the first pay period identified in the tax year 2019 to 2020. 2. Multiply by the number of calendar days in that pay period which correspond to at least one calendar day in the pay period (or partial pay period) you are claiming for. 3. Divide by the total number of calendar days in the pay period in the tax year 2019 to 2020. 4. Repeat steps 1, 2 and 3 for each subsequent identified pay period in the tax year 2019 to 2020. 5. Add them all together. 6. Round up or down if the result is not a whole number. <p>Find an example of how to work out the usual hours based on the hours worked in more than one pay period in the tax year 2019 to 2020.</p> <p>Please note that REC cannot do any calculations for hours, pay or grant claim. Please contact HMRC for further guidance if necessary.</p>
<p>3.6</p>	<p>If an individual is receiving furlough payments can they work elsewhere?</p> <ul style="list-style-type: none"> • A furloughed worker cannot work either for the employer which has furloughed them, or for any organisation linked or associated with that employer (though they can do training to keep up or to improve their skills). • However, they can work for another employer whilst on furlough if: <ul style="list-style-type: none"> ○ their contract allows them to do so, or ○ they have more than one employer, in which case each job should be treated separately for furlough purposes. <p>Agency workers: Agency workers can be furloughed but the agency which furloughs them cannot then supply them to any of its clients. However, the furloughed agency worker may work elsewhere, including for the furloughing agency's clients but either directly or through another agency. Importantly an agency cannot prohibit a temporary worker from</p>

	<p>working elsewhere - to do so would be in breach of Regulation 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.</p> <p>If an employee has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, their former employer/s should not re-employ them, put them on furlough and claim for their wages through the scheme.</p>
3.7	<p>Can I take someone back once I have furloughed them?</p> <ul style="list-style-type: none"> • Furloughing does not terminate someone's employment. If you furlough an employee, their employment will continue until such time as it is terminated. • Up to 30 June you could take employees off furlough repeatedly but you must have furloughed them for a minimum of three weeks during each furlough period. • An employer can furlough workers multiple times so an employer could rotate furlough leave amongst employees to ensure they share benefit/brunt of furlough leave. However, again there is no requirement to do so - as always, the decision around if and whom to furlough is entirely a business decision. • From 1 July you can furlough on a part-time basis - this may reduce employers' interest in rotating furlough. There is no minimum furlough period but you must claim for a minimum of seven days. • When you take someone off furlough, you must stop claiming the furlough grant for them.
3.8	<p>Can I make someone redundant after I furlough them?</p> <p>Yes. The job retention scheme is intended to help businesses continue to pay employees when their business has been impacted by coronavirus. However, it does not oblige employers to keep employees on payroll if it becomes clear that there will be no further work for them. So, employers can make someone redundant after they have put them on furlough.</p> <p>Remember also that employers must follow a correct redundancy process and should not assume that employees whom they furloughed are automatically the same group of people who should be made redundant. We have produced a step by step guide to redundancy and the appropriate letters (for 1 to 19 employees and 20 to 99 employees).</p> <p>An alternative to furlough might be flexible working so we have also produced a new flexible working checklist and letters. All template documents are available to REC members only.</p> <p>For more information on redundancy see:</p> <ul style="list-style-type: none"> • The redundancy section of the REC Legal Guide (REC members only) • ACAS
3.9	<p>Can we use furlough grant to pay either someone's redundancy notice period or redundancy pay?</p> <p>The Directions have never referred to redundancy and the guidance makes clear that employers should not use the furlough grant to pay redundancy pay, either statutory or contractual.</p> <p>Update 13.07.20:</p>

	<p>We asked Government a number of times whether employers could use the furlough grant to pay an employee whilst they were working out their notice period, having been selected for redundancy. See below a copy of a question asked by an MP and the response given by the Financial Secretary to the Treasury:</p> <div data-bbox="347 504 1337 922" style="border: 1px solid #ccc; padding: 10px;"> <p>Q Asked by Huw Merriman (Bexhill and Battle) [N] Asked on: 03 July 2020</p> <p>Treasury 68728</p> <p>Coronavirus Job Retention Scheme</p> <p>To ask the Chancellor of the Exchequer, with reference to clauses 2.1 and 2.2 of the amendments to the Treasury Direction to the Jobs Retention Scheme, published on 25 June 2020, whether employers are prohibited from using grants from the Coronavirus Jobs Retention Scheme for employees placed on redundancy notice periods; and whether those grants must be repaid by employers if used during this period.</p> <p>A Answered by: Jesse Norman Answered on: 08 July 2020</p> <p>The CJRS is designed to protect jobs and to keep people in employment. Where employers must make redundancies, they should do so in accordance with the normal rules and with contractual obligations. This includes giving a notice period and consulting staff before a final decision is reached.</p> <p>Employers may continue to claim under the scheme for a furloughed employee who is serving a statutory notice period subject to eligibility based on contact of employment.</p> </div> <p>Update 20 July 2020: The Government updated their JRS guidance on 10 and 17 July to confirm that employers can claim for a furloughed employee who is serving a statutory or contractual notice period but that grants under the JRS cannot be used to substitute redundancy payments.</p> <p>Of course, the furlough grant will only cover 80% of the salary and the employee may be entitled to 100%, depending on whether or not the employee qualifies for the statutory right to notice pay under the Employment Rights Act 1996. Remember, you'll have to pay Employer's NI and pension contributions from August and in September the Government's contribution will reduce to 70% and further reduce in October to 60%.</p>
4.	Timing of the Coronavirus Job Retention Scheme and how will it work
4.1	<p>How long will the scheme last for?</p> <p>The scheme was originally intended to last for three months. It was then extended to the end of June 2020. On 12 May the government announced an extension to the end of October 2020. However, the government's subsidy will reduce from August 2020. For more detail on changes to the subsidy see question 7.1 and the Government factsheet on changes to the Coronavirus Job Retention Scheme.</p>
4.2	<p>How long can an employer claim the furlough grant?</p> <p>Up to 30 June the minimum furlough period was three weeks. From 1 July there is no minimum furlough period but you must claim for a minimum of seven days.</p> <p>When the worker returns to work, the employer can no longer claim the furlough grant, unless and until it re-furloughs the worker.</p>
4.3	<p>(a) If the temporary worker's role was cancelled or postponed with less than three weeks of the role remaining does that mean they are not entitled to 80% of wages?</p>

	<p>(b) Can the worker still be put on furlough if the client has terminated the assignment?</p> <p>(a) The government guidance states that employers must pay employees all of the money received from the grant. However the minimum period of three weeks no longer applies from 1 July. Once they return to work, you must take them off furlough and stop claiming the furlough grant.</p> <p>(b) An agency can furlough a temporary worker if a client has terminated their assignment because coronavirus has impacted on their business. The agency does not have to have confirmation from the client that it will take back that temporary worker when it resumes business.</p> <p>See questions 3.3 to 3.5 about flexible furlough from 1 July.</p>
5.	Holiday leave and holiday pay
5.1	<p>Do <u>employees</u> accrue holiday whilst on furlough leave?</p> <p>Yes, while on furlough leave, the employment contract continues and holiday will continue to accrue. See the "Holiday Pay" section of Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme.</p> <p>See also Detailed guidance on holiday leave during furlough.</p>
5.2	<p>Do <u>temporary workers</u> on contracts for services accrue holiday leave and pay whilst on furlough?</p> <p>This has been a question since the opening of the scheme. REC pressed government for detailed advice which has now been published. In brief:</p> <ul style="list-style-type: none"> When a temporary worker is engaged on a contract for services, there is no contract between assignments. As the temporary worker accrues holiday according to time worked when on assignment, one argument is that if they have been furloughed by an agency, they cannot work for that agency and therefore cannot accrue holiday leave or pay during furlough leave from that agency when they are not working, this will also be reflected in the contract for services. <p>See Detailed guidance on holiday leave during furlough.</p>
5.3	<p>Can an employee take holiday whilst on furlough?</p> <p>Yes, an employee can take holiday whilst on furlough. We have taken the following from Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme:</p> <p><i>Employees can take holiday whilst on furlough. If an employee is flexibly furloughed then any hours taken as holiday during the claim period should be counted as furloughed hours rather than working hours.</i></p> <p><i>Employees should not be placed on furlough for a period simply because they are on holiday for that period. Working Time Regulations require holiday pay to be paid at the employee's normal rate of pay or, where the rate of pay varies, calculated on the basis of the average pay received by the employee in the last 52 working weeks.</i></p>

	<p><i>Therefore, if a furloughed employee takes holiday, the employer should pay their usual holiday pay in accordance with the Working Time Regulations. (REC emphasis)</i></p> <p><i>Employers will be obliged to pay employees who are on holiday additional amounts over the grant, though will have the flexibility to restrict when leave can be taken if there is a business need and the correct notice is given. This applies for both the furlough period and the recovery period.</i></p> <p><i>If an employee usually works bank holidays then the employer can agree that this is included in the grant payment. If the employee usually takes the bank holiday as leave then the employer would either have to top up their usual holiday pay, or give the employee a day of holiday in lieu.</i></p>
5.4	<p>Can agencies claim furlough grant for periods when teachers would otherwise be on school holidays?</p> <p>Back in May, the REC was advised by Crown Commercial Services and the Department for Business, Energy and Industrial Strategy that agency workers in schools can be furloughed during usual school holiday periods. Despite repeated requests we have not received written confirmation of this. However, in Parliament, the Financial Secretary to the Treasury recently stated that supply teachers could be furloughed over the summer holidays subject to the usual requirements of the scheme. Separately in another parliamentary question, the Education Minister, Nick Gibb, indicated that supply teachers can access the Scheme until the end of October.</p> <p>This does give some comfort but the question remains whether a teacher, who would not have ordinarily worked over the summer holidays, has been adversely affected by coronavirus as required by para 2.1 of the Third Direction. There is an argument that it hasn't once the school term is over, and that therefore they should not be furloughed over the summer period. Our concern is that if agencies choose to furlough over the summer period, following the statements made in Parliament, they may still be challenged by HMRC under the clawback arrangements (see question 9.2). Of course, businesses have an expectation that they should be able to rely on government guidance. We have asked government for written confirmation on the position.</p> <p>Ultimately however, in the absence of official guidance, furloughing over school holidays is a risk and a commercial decision that agencies in the education sector will have to make.</p> <p>PPN 02/20 and 04/20 - the Cabinet Office scheme: The Cabinet Office scheme, set out in Public Procurement Notice 02/20 ends on 30 June. It will be replaced with an updated guidance document PPN 04/20 which will run until 31 October. REC has already expressed concern that where teachers are benefitting under the current scheme, agencies will not be able to furlough them if schools do not adopt the new scheme after 30 June (because the 10 June cut-off date will have passed). We will keep agencies updated as and when we get more information.</p>
6.	<p>Interaction with the AWR</p>
6.1	<p>If an agency worker has been furloughed, does that stop or suspend their qualifying clock for the purposes of the Agency Workers Regulations 2010 (AWR)?</p>

	<p>The AWR provide for the qualifying clock to be paused in specific circumstances. Below we distinguish between agency workers who are furloughed because there is no work for them and agency workers who are furloughed because they are shielding.</p> <p>Agency workers who have been furloughed when there is no work: The AWR qualifying clock can be paused for breaks of up to six weeks. If the agency worker is furloughed because they have no work for a period of 6 weeks or less then their AWR qualifying clock will pause.</p> <p>People who are shielding: A business can furlough people who are shielding. A person can shield if they are defined as vulnerable under the relevant public health guidance and are therefore at high risk from coronavirus due to underlying health conditions. A person who wants to shield will need to have been notified by a medical professional to shield for a specified period of time (usually 12 weeks).</p> <p>Under the AWR, a qualifying clock is paused where there is break during or between assignments and this break is “wholly due to the fact that the agency worker is incapable of working in consequence of sickness or injury” (Regulation 7(8)(b)). This is worded broadly enough to cover a scenario where someone is instructed to shield, and therefore unable to work, even if they aren’t actually sick themselves as it is still a consequence of sickness (i.e. related to an underlying health condition).</p> <p>As the shielding period is currently 12 weeks this will be safely under the 28-week max (subject to the government changing the shielding period). Likewise, as the shielding guidance requires a notice to be given for someone to shield, it should not be an issue for individuals to give evidence if required. This means that the AWR qualifying clock will not reset if people shield in this manner.</p>
6.2	<p>If an agency worker’s furlough pay is below the pay that they would have received if entitled to equal pay for AWR purposes, does the agency have to top the pay up to meet that equal pay?</p> <ul style="list-style-type: none"> • HMRC’s guidance does not refer to AWR or equal treatment for agency workers. • If the agency averages out the temporary worker’s pay it may fall below an equal pay rate they had previously received or expected to receive. By analogy, the guidance also recognises that a temporary worker’s pay might fall below national minimum wage if they receive only 80% of what they previously received. So this is an argument against agencies having to top up pay during the furlough period. • However, we must bear in mind that this is an unprecedented scheme - the purpose of which is to retain jobs where possible. The alternative for some individuals will be to rely on SSP or Universal Credit, if they meet the criteria. • For more details on how to calculate furlough pay see Calculate how much you can claim through Coronavirus Job Retention Scheme.
7.	<p>What does the furlough grant cover?</p>
7.1	<p>The Treasury's Direction states that the furlough grant is intended to cover "regular salary or wages". The guidance elaborates on what this means. The furlough grant is intended to cover:</p>

- Regular wages
- Non-discretionary over-time
- Non-discretionary fees
- Non-discretionary commission payments
- Piece rate payments.

The furlough grant does not cover:

- Payments made at the employer's discretion including tips, discretionary bonuses or discretionary commission payments;
- Non-cash payments
- Non-monetary benefits such as benefits in kind e.g. company car, or salary sacrifice schemes.

See also [Steps to take before calculating your claim using the Coronavirus Job Retention Scheme](#) to making a claim.

Reduced government subsidy:

The government's subsidy will remain unchanged for July 2020. Therefore, it will be:

- The lower of 80% of an employee's regular wage or £2,500 per month
- Plus the associated Employer National Insurance contributions
- Plus the minimum automatic enrolment employer pension contributions on that subsidised wage.

From 1 August 2020 the government's subsidy will be reduced on a tapered basis. The worker will still be entitled to 80% of their pre-furlough pay so employers will have to contribute from that date. The changes are:

- In August, the government will pay 80% of wages up to a cap of £2,500 but will no longer pay the employer NICs or pension contributions for the furloughed hours the employee.
- In September, the government will pay 70% of wages up to a cap of £2,187.50 for the hours the employee does not work. Employers will pay employer NICs and pension contributions and 10% of wages to make up 80% total up to a cap of £2,500.
- In October, the government will pay 60% of wages up to a cap of £1,875 for the hours the employee does not work. Employers will pay employer NICs and pension contributions and 20% of wages to make up 80% total up to a cap of £2,500.

The cap will be proportional to the hours not worked. We show this in table form below.

Table 1: Government contribution, required employer contribution and amount employee receives where the employee is furloughed 100% of the time.

	July	August	September	October
Government contribution: Employer NICs and pension contribution	Yes	No	No	No
Government contribution: Wages	80% up to £2500	80% up to £2500	70% up to £2187.50	60% up to £1875

	Employer contribution: employer NICs and pension contribution	No	Yes	Yes	Yes
	Employer contribution: Wages	-	-	10% up to £312.50	20% up to £625
	Employee receives	80% up to £2500 per month	80% up to £2500 per month	80% up to £2500 per month	80% up to £2500 per month
	See Calculate how much you can claim through Coronavirus Job Retention Scheme .				
7.2	Can employers/ agencies top up the furlough grant?				
	Yes, employers/ agencies can top up the grant if they wish but they will bear the cost of doing so and cannot charge this back to HMRC.				
	Holiday: If an employee takes holiday whilst on furlough leave, that holiday should be paid at their normal rate of pay. So, in this instance, the employer would have to top up the furlough leave pay.				
7.3	Do employers/ agencies have to deduct tax and national insurance from the furlough grant?				
	Yes, the grant is a gross sum from which the employer/ agency must deduct PAYE tax, employee's national insurance and employee's pension auto-enrolment contribution.				
	Until 31 July 2020 the employer can also claim the related employers' national insurance and pensions auto-enrolment contribution (but the employer bears the cost of any additional pension contribution it may make). However, employers must bear the employers NICs and pension contribution from 1 August 2020. See the table below taken from Government factsheet on changes to the Coronavirus Job Retention Scheme :				
	Table 1: Government contribution, required employer contribution and amount employee receives where the employee is furloughed 100% of the time.				
		July	August	September	October
	Government contribution: Employer NICs and pension contribution	Yes	No	No	No
	Government contribution: Wages	80% up to £2500	80% up to £2500	70% up to £2187.50	60% up to £1875
	Employer contribution: employer NICs	No	Yes	Yes	Yes

	and pension contribution				
	Employer contribution: Wages	-	-	10% up to £312.50	20% up to £625
	Employee receives	80% up to £2500 per month	80% up to £2500 per month	80% up to £2500 per month	80% up to £2500 per month
	<p>See also Calculate how much you can claim through Coronavirus Job Retention Scheme and Steps to take before calculating your claim using the Coronavirus Job Retention Scheme to making a claim. These include examples about how to claim the employers' NICs and pensions contributions but have not been updated as yet to show the tapering.</p>				
7.4	Do agencies have to deduct student loans or attachment of earnings or child maintenance where these have been ordered by a court?				
	<p>The guidance for workers states that the employer will deduct student loans from furlough pay. If your workers are concerned about their student loans during the pandemic you can direct them to guidance produced by the Student Loan Company.</p> <p>We asked government to clarify whether attachment of earnings and child maintenance orders should also be deducted from furlough pay but these are not mentioned in any of the guidance documents.</p>				
7.5	Does the grant cover our apprenticeship levy costs?				
	<p>No, the furlough grant does not cover the levy. See "Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme". Nor does it cover the margin an agency would charge for supplying temporary workers.</p> <p>Note that the CITB have suspended payment of the CITB levy for 3 months from 26 March 2020 but government have decided not to suspend the apprenticeship levy. The CITB have confirmed to us by email that they will not seek payment of the levy until September 2020 (their website has not been updated at the time of writing).</p>				
7.6	If I furlough my temps who I have no work for, can I claim 80% of their pay and also the margin I would have got for supplying them as part of my employment costs?				
	Can the agency still charge the end-client for the staff needed to run the payroll for furloughed workers?				
	<ul style="list-style-type: none"> Importantly the grant does not include any agency margin or the costs to a business of administering the scheme. This will be particularly important for agencies who cannot charge the client the margin for the duration that a temporary worker is furloughed and for umbrella companies who charge a payroll or admin fee. It will be a commercial negotiation between the client and the agency as to whether the client will cover the agency's margin. However, clients will say that the agency is not providing them with any temporary worker services during the furlough period therefore there is nothing to charge. It may depend on when the client expects to require temporary workers from the agency and whether they are prepared to support agencies during this time. 				

	<ul style="list-style-type: none"> Note that the government's subsidy will reduce from 80% to 70% and 60% in September and October respectively (also the government will not pay employer NICs or pension contributions from 1 August).
7.7	<p>If we furlough the temporary worker at the client's request, and we continue to bill the client during the furlough period, will HMRC honour the grant?</p> <ul style="list-style-type: none"> The client may terminate an assignment because it no longer requires the temporary worker's services but the client doesn't furlough the worker. Only the business which payrolls the temporary worker can furlough that worker. What does the agency intend to bill the client for during the furlough period? <ul style="list-style-type: none"> The remaining 20% of the temporary worker's pay? Remember there is no obligation to pay the remaining 20% - we expect few clients would be prepared to cover this cost. The agency's margin? This will be a commercial negotiation between the agency and the client. The scheme does not cover agency margins. Therefore, HMRC will only 'honour' the grant for the lower of 80% of the worker's pay or £2500 per month (plus employer NICs and pension contribution). (these figures are subject to the changes taking effect from 1 August 2020 - see question 7.1). Remember though, any employee/temporary worker who is furloughed cannot work for any of your clients through you. It is not clear on what basis you would be able to continue to bill the client if you are not supplying the temporary worker. You'd need to check your client terms. However, we do know that under the scheme you are required to keep records re the employees/temporary workers who are furloughed and that HMRC will have a right to carry out audits. See question 9.1 about sanctions for incorrect or fraudulent claims.
8	The claims process
8.1	<p>How should an agency calculate the 80% of a temporary worker's pay where their pay varies according to time worked?</p> <p>See Calculate how much you can claim through Coronavirus Job Retention Scheme. It includes a number of examples to calculate pay, pension and national insurance contributions.</p> <p>Please note that REC cannot do any payment calculations. If you need support to make or calculate your claim please contact HMRC as shown in their guidance documents.</p> <p>The government's subsidy for furloughed workers will reduce from 1 August 2020 but the worker will still be entitled to 80% of pay for their furloughed hours. See question 7.1 for more detail.</p>
8.2	<p>How often can we claim the furlough grant?</p> <ul style="list-style-type: none"> Employers must still use the online portal. Make one claim per claim period.

	<ul style="list-style-type: none"> • Claim for all furloughed employees at the same time as you cannot make a later claim to cover a period already claimed for. • Neither the Direction nor any of the guidance stipulate what a claim period is. Instead each employer must consider what is appropriate for their own business. If an agency has different PAYE references for its internal staff, who might be paid monthly, and its temporary workers, usually paid weekly, it could apply different claim periods to each of those payrolls. <p>HMRC are changing the claim process to accommodate the changes to the scheme from 1 July.</p> <ul style="list-style-type: none"> • Employers must complete claims up to 30 June by 31 July. • From 1 July, claim periods can no longer overlap months. If a pay period overlaps months, then make a claim in each of those months for the relevant furlough period. • The number of employees an employer can claim for in any claim period cannot exceed the maximum number they have claimed for under any previous claim under the current CJRS except where they have newly furloughed those returning from parental leave, reservists returning to work or those newly TUPE'd, all after 10 June (see question 2.1). • Employers can continue to make claims in anticipation of an imminent payroll run, at the point payroll is run or after payroll has been run. <p>See Steps to take before calculating your claim using the Coronavirus Job Retention Scheme.</p> <p>REC can only advise to a very limited extent on the claims process and the operation of the portal. Please contact HMRC for further advice.</p>
8.3	<p>Can we correct a claim after we have submitted it?</p>
	<p>HMRC have updated the claims process so that a business can start a claim, save and return at a later date.</p>
8.4	<p>Do we have to report furlough payment made to workers?</p>
	<p>Yes. Businesses must report on furlough payments made to workers through Real Time Information. For more detail see Reporting employees' wages to HMRC when you've claimed through the Coronavirus Job Retention Scheme.</p>
8.5	<p>What records do we need to keep?</p> <p>We mentioned above that you need to keep the furlough agreement up to 30 June 2025.</p> <p>You also need to keep records regarding the claim itself. You must keep a copy of all records for 6 years, including:</p> <ul style="list-style-type: none"> • the amount claimed and claim period for each employee • the claim reference number for your records • your calculations in case HMRC need more information about your claim • for employees you flexibly furloughed, usual hours worked including any calculations that were required • for employees you flexibly furloughed, actual hours worked.

9	Getting it wrong - HMRC's powers to reclaim grants paid
9.1	<p data-bbox="320 367 1401 434">How to correct errors made when claiming</p> <p data-bbox="320 434 1401 501">We have taken the following text from Claim for wages through the Coronavirus Job Retention Scheme:</p> <p data-bbox="320 501 1401 568"><i>If you make an error when claiming</i></p> <p data-bbox="320 568 1401 658"><i>If you have made an error in a claim that has resulted in an overclaimed amount, you must pay this back to HMRC.</i></p> <p data-bbox="320 658 1401 860"><i>If you are making another claim then you can tell us about an overclaimed amount as part of this. When you make your next claim you will be asked whether you need to reduce the amount to take account of a previous overclaim. Your new claim amount will be reduced to reflect the overclaimed amount and you should keep a record of this adjustment for 6 years.</i></p> <p data-bbox="320 860 1401 1016"><i>If you have made an error in a claim and do not plan to submit further claims, you should contact HMRC to let us know about your error and find out how to pay back any overclaimed amounts. Once you have contacted us you will be given a payment reference number and directed to make a payment.</i></p> <p data-bbox="320 1016 1401 1164"><i>If you have made an error that has resulted in an underclaimed amount, you should contact HMRC to amend your claim. As you are increasing the amount of your claim, we need to conduct additional checks.</i></p>
9.2	<p data-bbox="320 1169 1401 1236">Can HMRC claim back any of the furlough grant I have already paid to my employees?</p> <p data-bbox="320 1236 1401 1438">The Direction and the guidance advise businesses to be sure that they claim only for employees whom they can furlough. Business are warned not to make 'abusive' claims or claims which are not in the spirit of the scheme. Of course, there is a difference between abusive claims and claims which simply got the calculations wrong. In order to demonstrate that you have complied with the rules of the scheme, you should keep the required records for five years (as always you must keep your PAYE records for six years).</p> <p data-bbox="320 1438 1401 1594">HMRC can audit employers and reserve the right to reclaim any furlough grant incorrectly claimed. Neither the Direction nor the guidance mention sanctions or penalties for incorrect claims - we repeatedly asked what these might be but there was nothing in the guidance.</p> <p data-bbox="320 1594 1401 1662">Clawback consultation:</p> <p data-bbox="320 1662 1401 1751">However, HMRC have recently consulted on "clawback arrangements" which would allow HMRC to reclaim furlough grants already paid to employers. The draft legislation proposed that HMRC could recover monies in the following circumstances:</p> <ul data-bbox="320 1751 1401 1998" style="list-style-type: none"> (1) payments made to employers to which they were not entitled (even where a genuine mistake was made). (2) payments made where the person or business making the claim is no longer entitled to the payment because of a change in circumstances. (3) payments made which have not been used to pay the furloughed employee costs, e.g. where the employer did not use the money received under the CJRS to pay the employee and/or the income tax, NICs and pension contributions.



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	<p>Sanctions could range from 30% to 100% of the grant reclaimed. REC has responded to this consultation. We expect the relevant powers and sanctions to be included in the Finance Bill going through Parliament at the moment and expected to receive Royal Assent in July. We will update this FAQ when we have the final legislation.</p>
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