

Coronavirus Job Retention Scheme Guidelines for Managers

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1. Introduction

These guidelines provide information for line managers on the new Coronavirus Job Retention Scheme (JRS) including arrangements for furlough leave.

In response to the coronavirus pandemic, the government introduced the new JRS quickly and without the benefit of the usual consultation processes. Consequently, there are still areas of uncertainty that will hopefully be clarified as time goes on. These guidelines will be updated on a regular basis as and when more information is released but please do contact your HR Business Partner for assistance if you have any questions in the meantime.

2. What is the Coronavirus Job Retention Scheme (JRS)

The JRS has been temporarily introduced by the government in response to the impact of the coronavirus to help pay people's wages and reduce redundancies and unemployment.

Employers will be able to contact HMRC by the end of April for a grant to cover most of the wages of their workforce who remain on payroll but are temporarily not working during the impact of the coronavirus outbreak.

Under the scheme, employees who are placed on furlough leave will continue to receive 80% of their salary up to a maximum of £2,500 (gross pay). The scheme aims to help employers keep their employees on their payroll so they are retained for when work requirements return, avoiding the need for redundancies in the meantime.

More information is available on the [government website](#).

3. What does furlough mean?

The word 'furlough' comes from the Dutch word 'Verlof', which means temporary leave of absence from work. Furlough can be due to economic conditions affecting one particular organisation or matters affecting the country as a whole. Whilst furlough is used in other countries such as the USA, until now the expression has not carried any meaning in UK employment law.

4. Which employers can use the Job Retention Scheme?

The governance guidance confirms that UK employers include businesses, charities, recruitment agencies (if the agency workers are paid through their payroll) and public authorities can use the JRS.

The government has stated that it does not expect much public sector use of the scheme because many public sector employers are continuing to work throughout the coronavirus outbreak.

Non-public sector employers who receive public funding for staff costs are expected to continue to pay staff and not to place them on furlough. This is so the state does not pay for these staff costs twice.

Please note: There is still some uncertainty over the level to which Universities are able to use the JRS due to some research grants being publicly funded and the treatment of student loans as partly financial assets (loans) and partly as government expenditure (capital transfers) reflecting that tuition fees will never be paid back. Assurances have been sought from the Universities Minister

who has confirmed that the HE sector is not excluded from the scheme but that we need to be circumspect in any claim we make and ensure certain conditions are met (see point 5 below).

A task force, chaired by the Vice-Provost (Research) is looking into whether continued funding for researchers funded by external grant income will continue or whether their salary costs may fall to the University, in which case we may be able to use the JRS. This guidance will be updated once clarification is available.

5. Which employees can be furloughed under the JRS?

The JRS scheme is intended for use in response to the coronavirus crisis and must not be used as an opportunist way to fund staffing costs.

The JRS can be used where:

- a) we can show significant operational impact from the virus that prevents the relevant staff group from working at all;
 - b) have considered the government guidance and the extent to which wage costs that might be claimed are already attributed (to any significant effect) to public funding;
 - c) we have applied the principles of good governance and have a clear and defensible rationale for furloughing employees;
- and
- d) the furloughed employees were on our payroll on 28 February 2020 - employees who joined the University after this date cannot be placed on furlough leave.

The scheme is applicable for full-time and part-time employees and those working under flexible hour contracts such as HPL staff (subject to above conditions). It does not cover the self-employed.

Casual staff, including job shop workers such as student placement workers, depending on the specific circumstances of their engagement can be furloughed if they meet the criteria above and if they would have continued working if circumstances hadn't changed due to the coronavirus.

6. Duration of furlough leave

The government has confirmed the JRS will run for at least 3 months from 1 March 2020 but will be extended if necessary. The scheme can be applied from the date at which the employee was formally placed on furlough and they stopped working.

Furlough can be back dated to 1 March for employees who have already been made redundant as a result of the coronavirus restrictions if they are re-instated.

The minimum period of furlough leave is 3 weeks.

7. How much salary will an employee receive while on Furlough Leave?

The JRS provides financial assistance to the value of 80% of salary up to a maximum of £2,500 per month. While there is no obligation on employers to make up the 20% of wages lost by staff who

are paid under the scheme, the University will continue to pay staff their full contractual salary in the normal way whilst they are on furlough leave. We are committed to minimising the impact of the coronavirus for our staff where we can but it is important we keep this arrangement under review in the event that the campus is unable to re-open fully for a prolonged period of time.

The JRS scheme calculations are as follows:

Full-time and part-time staff	Salary before tax as at 28 February 2020 is used to calculate the 80% payment. Normal salary elements will be taken into account including London allowance, acting up allowances, leadership allowance and market supplements. However, fees, commission and bonuses are not used in calculating the amount.
Variable/flexible hour staff	<p>If the employee has been employed (or engaged by an employment business [an 'agency']) for a full twelve months prior to the claim, you can claim for the higher of either:</p> <ul style="list-style-type: none"> • the same month's earning from the previous year • average monthly earnings from the 2019-20 tax year <p>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.</p>

Employers will be required to deduct income tax and employer and employee's NICs from the monies paid to furloughed workers.

In addition to the £2,500 or 80% (the lower of the two) employers will also be able to claim the cost of employer NICs and (mandatory) auto enrolment pension contributions employment costs can be claimed from HMRC by way of reimbursement. Any additional pension contributions would not be recoverable, any apprenticeship levy or the costs of other benefits such as life or medical insurance may not be reclaimed under the Scheme.

8. Can employees be placed on partial furlough if there is some work is available?

No, partial furlough is not possible. Employees can only be furloughed if there is no work for them to do.

In some cases, employees may be able to re-prioritise their work commitments to enable them to make the most of working from home and then attending to campus based commitments once the campus is open.

Key workers, including those who are required to attend campus for essential maintenance/services cannot be furloughed as they are still working for the University.

9. Can employees work whilst on furlough leave?

People who get furloughed must not work for their employer during the period of furlough. This includes not asking employees to follow up on work emails while on furlough.

The guidance is unclear at the moment as to whether employees can work for another employer whilst furloughed. It is likely that HMRC will take a firm view on this as the JRS shouldn't be used

as a windfall, particularly if colleagues are working full time and if the employer is continuing to pay full salary.

We recognise that some employees will hold part-time or variable hour roles with the University and have work commitments elsewhere. If the contract of employment allows, the employee may continue to undertake other employment if they are furloughed by the University.

In any event, depending on employment contract terms, employees may be required to seek prior approval from their line manager before taking a second role.

10. Can employees undertake training and volunteering while on furlough leave?

Yes, in fact staff are actively encouraged to undertake training (including online compliance training) and unpaid volunteering whilst on furlough leave.

Volunteering for the NHS and the new statutory right to emergency volunteering leave for certain employees are separate to the JRS and a furloughed employee can take part in emergency volunteer work as long as it does not provide services or generate revenue for the University as their employer.

11. Can employees looking after children at home or 'shielding' be placed on furlough?

Employees staying at home to look after children and those who are 'shielding' in line with public health guidance are included in the JRS in preference to being made redundant.

12. How do I select which employees to furlough?

In some cases staff will be selected on the basis that an entire service, operation or project has been stopped due to the coronavirus. However, there may be other circumstances where there are multiple staff undertaking the same work but the virus has reduced the level of work available for the entire team. Guidance on this situation is limited and so a transparent and fair approach will need to be taken. This could include:

- selecting individuals based on their specific role
- seeking volunteers for furlough (some colleagues may find working from home particularly challenging)
- prioritising furlough on full pay for colleagues who have caring responsibilities (such as caring for children during school closures)
- prioritising furlough on full pay for colleagues who are 'shielding' in line with public health guidance.

In any event, care will need to be taken to ensure that equality and diversity legislation is respected.

13. Can I rotate employees on furlough leave?

This is a grey area but as HMRC have said that a worker can be furloughed more than once, it appears rotation is possible providing it is in trenches of not less than three weeks.

14. What about employees who are on maternity, paternity, adoption or shared parental leave?

Employees remain eligible for family leave and pay in the usual way. As the University offers enhanced payments above statutory levels, these can potentially be included as wage costs that can be claimed through the scheme.

15. Do employees have a right to take furlough leave?

No, there is no right to be furloughed. The process has to be initiated by the employer.

16. What if an employee does not want to go on furlough leave?

It is important to note that any decisions to furlough an employee is entirely temporary in order to address short-term issues; it has absolutely no effect on their long-term employment at Brunel, and will in fact help support the University financially. We hope that this assurance and continuing to honour full salary will give employees reassurance during these difficult times.

If an employee still has concerns and refused to go on furlough, they would potentially be at risk of redundancy on the basis that the work they were previously undertaking has ceased. This would be managed in accordance with the University's Change Management and Redundancy Procedures.

17. Can employees who are on long term sick leave be furloughed?

No. Staff on sick leave should receive sick pay in line with their terms and conditions of employment. The JRS must only be used where work has ceased due to the impact of the coronavirus and not due to personal circumstances that would have applied regardless such as ill health.

18. What happens to annual leave whilst on furlough leave?

Existing statutory and contractual annual leave principles continue to apply. Employees will continue to accrue holiday pay whilst on furlough. If an employee takes holiday their period of furlough would end and if the furlough has lasted less than three weeks, reimbursement will not be possible for that furlough period.

19. Will employees on furlough leave continue to accrue continuous service?

Yes, employment continues whilst an individual is on furlough leave and so they continue to accrue continuous service including for the purpose of statutory rights such as unfair dismissal, redundancy and statutory leave.

20. What about employees on fixed term contracts that are due to expire?

The purpose of the scheme is to retain and pay employees that would have otherwise been made redundant due to the impact of the coronavirus. A fixed term contract is a slightly different situation. By nature of the contract, these individuals are employed for a fixed term, at the end of which there is no employment. For the time that they are under the fixed term contract, we do not

see why they cannot be furloughed. However, at the end of the contract (on the basis that it would have ended anyway), it is unlikely that HMRC could issue a grant for someone who wouldn't normally have been employed anyway.

The key issue to consider is whether the contract is ending as a result of the coronavirus.

Fixed term contract cases are complex; if you have an employee coming to an end of their contract please seek further advice from your HR Business Partner.

21. What about apprentices?

Apprentices can be furloughed from work but still continue with the training element of their roles.

22. What about agency workers?

Under the JRS, agency staff may be furloughed if they are paid through our PAYE payroll but not otherwise. Where individuals are employed by an agency and paid through the agency's payroll, then they may be furloughed by the agency.

23. Are there additional issues to consider if a furloughed employee is sponsored under a Tier 2 visa?

Visa arrangements will continue in the normal way whilst on furlough. Sponsored workers may be entitled to a minimum salary under the immigration rules – although on the basis that the University honours contractual salary this should not be an issue. The home office have issued [Urgent Home Office guidance required for furloughed Tier 2 sponsored workers](#). You can also see our [UK Immigration FAQs](#).

24. I have identified employees for furlough – what do I do next?

Representatives from the HR and Finance Directorates are contacting Heads of Departments/Directors of Services to review their staff arrangements and where staff may be eligible for furlough.

Once staff have been identified, the line manager and HR Business Partner should meet with the employee (using an online platform or if this is not possible by telephone) to explain why they have been identified for furlough leave and to give them assurances that furlough leave is a temporary measure to deal with this emergency situation and that their terms and conditions of employment remain unchanged with the exception that they do not need to attend work.

Following the discussion with the employee, the HR Directorate will issue the employee with formal notification that they are being placed on furlough leave, the data of when leave starts and the anticipated duration.

25. Governance and record keeping

We anticipate that it is highly likely we will need to be able to demonstrate to HMRC extensive information on the basis of the JRS claim including evidence of why furlough was necessary, written confirmation of furlough leave and evidence of pay. It is therefore important that accurate records are maintained so that this evidence can be provided.

CHIME will be updated by the HR Directorate to reflect that the employee has been furloughed and so the grant application can be made to HMRC.

26. How do I support employees who are furloughed?

It is essential that you continue to support and communicate with furloughed workers. Given that we should not be asking them to access their work emails, you will need to establish a way to share general communications with them.

Some staff may feel concerned about being furloughed and they should be invited to seek support from their line manager, HR, their trade union and the Employee Assistance Programme.