

COVID 19 (Coronavirus)

Coronavirus Job Retention Scheme for Furloughed Workers - FAQs

V6: 13 May 2020

Introductory notes
Frequently Asked Questions

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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). The government announced three key changes to the scheme on 12 May 2020:

1. A second extension of the scheme to the end of October 2020;
2. Greater flexibility in the scheme to allow part-time working; and
3. From August employers will be expected to share the cost of the furloughing their workers.

We expect more detail on part-time working and the employers' contribution by the end of May. In the meantime, employers can continue to claim for 80% of a furloughed worker's usual monthly wage costs, up to a maximum of £2,500 a month. The employer can still claim the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.

The scheme remains open to all UK employers that had created and started a PAYE payroll scheme on 19 March 2020. 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.

Government guidance

These FAQs cover a range of issues asked about the scheme. The rules of the scheme and the policy behind the scheme are set out in a number of government guidance documents including:

1. A written [Direction](#) from Treasury to HMRC which sets out the formal rules for the operation of the scheme. The Direction was issued under the Coronavirus Act - the emergency legislation introduced to manage the Coronavirus outbreak.
2. [Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme](#). (this guidance has been updated several times since it was first published on 26 March).
3. [Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme](#). This guidance includes a number of examples about how to calculate the furlough grant for each worker. See also [REC's guidance on working out furlough pay](#).
4. [Claim for your employees' wages through the Coronavirus Job Retention Scheme - a step by step guide](#). This guidance also includes a number of examples but also sets out the steps to follow before making the claim and how to use the [online portal](#).
5. 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](#). (We are waiting for additional guidance from NHSI).
6. For agencies supplying schools see section 12 of [Actions for Schools during the coronavirus outbreak](#).

At the time of writing we are waiting for detailed guidance on holiday leave during furlough.

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

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.

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 the Treasury's written Direction published on 15 April which is 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 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. AWR
7. What the furlough grant covers
8. The claims process

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 3 months. However it was extended to the end of June and on 12 May government announced a further extension to the end of October 2020.</p> <p>At the same time government also announced that:</p> <ul style="list-style-type: none"> workers can be furloughed on a part-time basis; from August employers will have to share the cost of furloughing their workers. <p>We do not have any detail at the moment as to how the part-time furlough will work or what level of contribution employers will be expected to make.</p> <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 Written Direction to HMRC dated 15 April 2020. The Direction is supplemented by a range of guidance (hyperlinks on pages 1 and 2).</p> <p>In summary, if the employer furloughs a worker, s/he remains an employee for the furlough period. The government will pay the employer 80% (up to a maximum of £2500) of the employee's usual earnings for the furlough period. As above, from August</p>

	employers will be expected to share the cost of furloughing workers - again, we await the detail.
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. 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 "<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>Government expectations: For businesses working in the public sector, see also Public Procurement Notice 02/20 Supplier Relief due to COVID-19 and for agencies supplying schools see Actions for Schools during the coronavirus outbreak.</p>
2.2	<p>Can agencies furlough temporary workers engaged on a contract for services?</p> <p>Yes, you can furlough an agency worker on a contract for services.</p> <p>The Direction 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 for employment rights purposes, they will be an employee for tax purposes and so are covered by the furlough 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; and • Have a UK bank account. <p>Then in relation to individuals, the Treasury's written Direction (para 6.1) states that an employee is a furloughed employee if:</p>

	<ul style="list-style-type: none"> • The employer has instructed the employee to stop all work in relation to their employment; • The period for which the employees has or will cease work is more than 21 calendar days; and • The employer's instruction is given by reason of circumstances arising from coronavirus. <p>So, 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>
2.4	<p>What does on payroll on 19 March 2020 mean?</p> <p>See Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme.</p> <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 that 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.</p> <p>We acknowledge that some workers will still fall through the gaps, e.g. those who may have started a new job after 28 February 2020, but having not been paid until after 19 March 2020 did not appear on a RTI submission on or before that date. The government is aware of this but it is a policy matter rather than a legal one.</p> <p>Temps not on live assignment on 28 February or 19 March:</p> <p>There is a question about temporary workers who were not on live assignment on 28 February or 19 March. For example, 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, which is one of the requirements of the scheme (para 6.1 of the Direction). If an agency were to furlough a temporary worker not on live assignment at the time (and this was not because they were on some form of leave) then the agency may fall foul of para 2.5 of the Direction which states that <i>'no CJRS claim should be made if it is abusive or otherwise contrary to the exceptional purpose of the CJRS'</i>.</p> <p>This is not expressly stated in the guidance but we have seen email correspondence where HMRC state this position. We have asked for confirmation about this and specifically, for this to be expressly stated in the guidance, if that is the official position.</p>
2.5	<p>What about employees who the employer had already made redundant?</p> <p>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 in order to furlough them.
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 (though remember the minimum 3-week furlough leave period). 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 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>See paras 8.1, 8.6 and 8.7 of the Direction and Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme.</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 if you can claim for your employee's wages through the Coronavirus Job Retention Scheme.</p>
2.8	<p>Who is responsible for furloughing a temporary worker who works through an umbrella company?</p> <p>See Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme.</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.

	<ul style="list-style-type: none"> If an umbrella does decide to furlough workers, it cannot charge a fee from the furlough grant.
2.10	Does the furlough scheme apply to those working through CIS intermediaries (in the construction sector?)
	<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 self-employed workers which is outside the scope of this guidance.</p>
2.11	Can an agency furlough limited company contractors?
	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?
	<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 and use the scheme to cover 80% of the contractors pay if the contractor is on the PSC's payroll. For guidance regarding contractors on public sector engagements and who are within scope of the off-payroll working rules (IR35) see Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme. There is a separate scheme for the self-employed which is outside the scope of this guidance.
2.12	Can a company furlough its own directors?
	<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 and the company can access use the grant to cover 80% of a director's wages (up to the £2500 cap. But this only applies to wages paid through PAYE. If a director also receives dividends, this is not covered by the grant. 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
3.1	What process do agencies have to follow to furlough workers?
	In Check if you can claim for your employee's wages through the Coronavirus Job Retention Scheme HMRC state the following:

	<p><i>"To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. If this is done in a way that is consistent with employment law, that consent is valid for the purposes of claiming the CJRS. There needs to be a written record, but the employee does not have to provide a written response. A record of this communication must be kept for five years".</i></p> <p>This can all be done by email.</p> <p>However, the written Direction requires the employee's agreement to be furloughed. Nonetheless, HMRC have confirmed the following:</p> <p><i>"HMRC will act at all times in accordance with the Direction. HMRC's interpretation of the Direction s set out in our published guidance. It is our expectation that customers should consider the guidance in the first instance when seeking to understand the operation of the scheme and HMRC's interpretation of the Direction".</i></p> <p>Remember that you must comply with equality law when considering who to furlough.</p>
3.2	<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> <p>Document 1 – information about the scheme and why the agency wants to use it Document 2 – a template furlough agreement Document 3 – a letter confirming that the agency has furloughed the employee/temporary worker.</p> <p>Our legal templates and documents are available only to REC members.</p>
3.3	<p>How long can I furlough an agency worker for? E.g. just for intended duration of assignment or any length of time even if no assignment was due to be active?</p> <ul style="list-style-type: none"> • The minimum furlough period is 21 days for all workers/ employees. • Neither the Direction nor the guidance address the specific point around duration of furlough for temporary workers on assignment or whose assignment may have just finished. However, the government is clear that it wants to protect as many workers as possible and so agencies can furlough workers for so long as the scheme continues. Of course, if the agency does find work for a furloughed agency worker then they should take them off furlough (once the minimum period of 3 weeks is finished), supply them and cease to claim the furlough grant. if later, there is no further work, an employer can furlough an employee again if need be, again, subject to the minimum furlough period of 3 weeks (see question 3.5). <p>Update: on 12 May the government announced that it would allow greater flexibility in the scheme by allowing employers to furlough staff on a part-time basis. However we do not have any detail at the time of writing about how this will operate. We will advise agencies when we have more detail (expected end May 2020).</p>
3.4	<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. • 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. 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 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>
3.5	<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. • You can take them off furlough but they must have been furloughed for a minimum of three weeks. When you take someone off furlough, you must cease claiming the furlough grant for them. • An employer can furlough workers multiple times. This suggests that an employer could even 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 to if and whom to furlough is entirely a business decision. <p>Update: on 12 May the government announced that it would allow greater flexibility in the scheme by allowing employers to furlough staff on a part-time basis. However we do not have any detail at the time of writing about how this will operate. We will advise agencies as soon as we have more detail (expected end May 2020).</p> <p>Remember always to consider equality law when deciding who to furlough.</p>
3.6	<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. However, remember that the minimum furlough period is 3 weeks.</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.</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
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 3 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.</p>
4.2	<p>How long can an employer claim the furlough grant?</p> <p>If an employer chooses to furlough a worker, they must do so for a minimum of 21 calendar days i.e. three weeks. When the worker returns to work, the employer can no longer claim the furlough grant, unless and until it re-furloughs the worker. Update re part-time workers.</p> <p>Update: on 12 May the government announced that it would allow greater flexibility in the scheme by allowing employers to furlough staff on a part-time basis. However we do not have any detail at the time of writing about how this will operate. We will advise agencies as soon as we have more detail (expected end May 2020).</p>
4.3	<p>(a) If the temporary worker's role was cancelled or postponed with less than 3 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 so if you furlough a temporary worker it must be for the minimum period of three weeks and you must pay them all of the furlough grant you receive. Once they return to work, you must take them off furlough. You can furlough multiple times but each furlough period must be for the minimum 3-week period.</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>
5.	Holiday and holiday pay
5.1	<p>Do employees 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 Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme.</p>
5.2	<p>Do temporary workers accrue holiday leave and pay whilst on furlough?</p> <p>We received lots of questions on this but there is disagreement amongst employment lawyers, particularly in relation to temporary workers. We are waiting for detailed government guidance on this. In the meantime:</p>

	<ul style="list-style-type: none"> Ordinarily 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. Some however argue that holiday leave does accrue during furlough leave. The process of furloughing employees and temporary workers is a new concept in the UK. The government announced the job retention scheme as an emergency measure to protect the income and jobs of the majority of workers. The interaction of the scheme with other employment rights has not yet been fully worked out and certainly has not been tested in any cases and may not be for some time. We appreciate this may be a determining factor for many agencies when considering whether to furlough or not. REC is working hard to get more detailed advice and guidance and will keep members updated.
5.3	<p>Can agencies claim furlough grant for periods when teachers would otherwise be on school holidays?</p> <p>REC is currently in discussion with the Crown Commercial Service and central government about whether agency workers in the education sector, who meet the eligibility criteria for the scheme can be furloughed for periods that include school holidays. The difficulty is that the scheme guidance states that <i>'If an employee started unpaid leave after 28 February 2020, you can put them on furlough instead. If you put them on furlough then you should pay them at least 80% of their regular wages, up to the monthly cap of £2500'</i> However the Treasury Direction in Paragraph 6.5 states <i>"No claim to CJRS may be made in respect of an unpaid sabbatical or other period of unpaid leave of an employee beginning before or after 19 March 2020 (whether agreed or otherwise arranged conditionally or unconditionally on, before or after that day)"</i></p> <p>There is a contradiction with regards to unpaid leave which includes school holidays - we have raised this with Government.</p> <p>Update: On 30.04.20 we received written confirmation from CCS that, agencies can claim furlough grant for when teachers would otherwise be on school holidays. However, we are waiting for written confirmation in government guidance. See also Public Procurement Notice 02/20 Supplier Relief due to COVID-19 and for agencies supplying schools see Actions for Schools during the coronavirus outbreak.</p>
6.	AWR
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</p>

	<p>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 "Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme"
7.	What does the furlough grant cover?
7.1	<p>See "Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme". In brief the grant will cover:</p> <ul style="list-style-type: none"> • 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.

	<p>The Treasury's Direction states that the furlough grant is intended to cover "regular salary or wages" (para 7.3 of the Direction). The guidance elaborates on what this means. The furlough grant is intended to cover:</p> <ul style="list-style-type: none"> • regular wages • non-discretionary over-time • non-discretionary fees • non-discretionary commission payments • piece rate payments. <p>The furlough grant does not cover:</p> <ul style="list-style-type: none"> • 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. <p>The guidance noted above has a number of examples of how to work out what to claim. See also Claim for your employees' wages through the Coronavirus Job Retention Scheme - a step by step guide to making a claim.</p> <p>Update: on 12 May the government announced that employers will be able to furlough workers on a part-time basis. However from August employers will be expected to share the cost of furloughing their workers. We do not know at this stage what that contribution will be.</p>
7.2	<p>Can employers/ agencies top up the furlough grant?</p> <p>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.</p> <p>Update: on 12 May the government announced some changes to the scheme. For the time being the furlough grant is 80% of wages, to a maximum of £2500 per month. However from August employers will be expected to share the cost of furloughing staff. We expect more detail on this by the end of May.</p> <p>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.</p>
7.3	<p>Do agencies have to deduct tax and national insurance from the furlough grant?</p> <p>Yes, the grant is a gross sum from which the agency must deduct PAYE tax, employee's national insurance and employee's pension auto-enrolment contribution.</p> <p>The agency 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).</p> <p>See "Work out 80% of your employees' wages to claim through the Coronavirus Job Retention Scheme" and Claim for your employees' wages through the Coronavirus Job Retention Scheme - a step by step guide to making a claim. These include examples about how to claim the employers' NICs and pensions contributions.</p>

7.4	<p>Do agencies have to deduct student loans or attachment of earnings or child maintenance where these have been ordered by a court?</p> <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 have asked government to clarify whether attachment of earnings and child maintenance orders should also be deducted from furlough pay.</p>
7.5	<p>Does the grant cover our apprenticeship levy costs?</p> <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.</p>
7.6	<p>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?</p> <p>Can the agency still charge the end-client for the staff needed to run the payroll for furloughed workers?</p> <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.
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).

	<ul style="list-style-type: none"> Remember though, any employee/temporary worker who is furloughed is not able to continue to 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. We don't have any information as to what action they could take after payments have been made if monies paid out are not in accordance with the scheme.
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 "Work out 80% of your employees' wages to claim through the 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>
8.2	<p>How often can we claim the furlough grant?</p> <p>See Claim for your employees' wages through the Coronavirus Job Retention Scheme - a step by step guide.</p> <ul style="list-style-type: none"> You can only make one claim per claim period. You must claim for all furloughed employees at the same time as you can not 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>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. However if members experience particular problems with the process because they are recruitment businesses, we can raise that with government.</p>
8.3	<p>Can we correct a claim after we have submitted it?</p> <p>At the time of writing there is no process for amending claims already submitted. However, HMRC have stated that they are looking at this. Meanwhile if you have any questions about the application process please contact HMRC.</p> <p>Update: HMRC have now updated the claims process so that a business can start a claim, save and return at a later date.</p>
8.4	Do we have to report furlough payment made to workers?



	Yes. Businesses must report on furlough payments made to workers through Real Time Information.
8.5	<p>Can HMRC claim back any of the furlough grant I have already paid to my employees?</p> <p>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 such claims and claims which simply got the calculations wrong.</p> <p>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 have asked what these might be.</p> <p>Finally, in order to demonstrate that you have complied with the rules of the scheme, you should keep the required records for five years.</p>