INTRODUCTION

**Government** updated its guidance on the [Coronavirus Job Retention Scheme](https://www.gov.uk) on Saturday, 4 April 2020 to provide clarity on some of the key aspects of the Scheme.

The updated guidance is summarised below and is supplemented by a selection of frequently asked questions received by BESA’s Employment Affairs Department over the past weeks.

**Remember**: Government guidelines are being updated on a regular basis so please keep up to date by visiting [www.gov.uk](https://www.gov.uk).

**Summary of Updated Guidance**

**Clarified**: to be eligible to make a claim employers must have an operational PAYE system in place as at 28 February 2020, but must also be enrolled for [PAYE online](https://www.gov.uk) which can take up to 10 days; so make sure you have enrolled.

**Clarified**: furloughed employees can undertake work for another employer whilst furloughed, provided the employment contract permits this. BESA would advise employers to agree sensible guidelines, if appropriate, in case employees need to come off furlough.

**Clarified**: salaried (PAYE) Company Directors may be furloughed but this decision needs to be formally adopted by the company and recorded. Furloughed directors may continue to perform their statutory duties but should not do work to generate commercial revenue or provide services to or on behalf of the company.

**New**: 80% of ‘compulsory’ [i.e. contractual] commission can be re-claimed, as well as basic salary. BESA presumes this relates to past commission only. 80% of fees can also be re-claimed (earlier guidance stated fees were not covered by the Scheme).

**New**: employers to agree with, and notify, employees of their furloughed status in writing and must keep the record of that written notification for five years.

**Confirmed**: past overtime and other regular payments that an employer has been obliged to pay can be included in the calculation of wages. Discretionary and non-cash payments and taxable benefits in kind are excluded

**Clarified**: employees can be furloughed multiple times, i.e. they can be furloughed, brought back to work, then re-furloughed subject to each furlough period being a **minimum of three weeks**.

**New**: employees who are unable to work because they have caring responsibilities linked to COVID-19, such as looking after children, can now be furloughed.

**Confirmed**: various types of people paid via PAYE may be furloughed even though they are not ‘employees’ in the narrow, employment law sense. These include office holders (including company directors), salaried members of limited liability partnerships, agency workers and ‘limb (b) workers’.

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### How do I agree furlough with employees?

Employers and employees need to reach agreement to make any changes to the employment contract, and the same applies to furlough.

In the first instance employers should check the employment contract to see whether it contains a lay off clause. Where such a clause exists, this can be invoked almost immediately but should be confirmed in writing to the employee and retained for 5 years.

Where no lay-off clause exists, employers must consult and reach agreement with the employee to place them on furloughed leave. In terms of timeframe, consultation should take as long as it takes to reach agreement. Again, follow up in writing and retain for 5 years.

BESA has developed an updated template letter for furloughed workers for this purpose which can be found [here](#).

**Note:** When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

Please contact employment.affairs@thebesa.com if your employee does not agree to be furloughed.

### How will this work for those on zero hour/flexible contracts/agency workers?

This scheme aims to support all those employed through the PAYE system regardless of their employment contract, including those on zero-hour contracts. Zero-hour and flexible contracts can cover a whole range of working arrangements.

- The 80% grant is applied to the higher of:
  1. the earnings in the same pay period in the previous year;
  2. the average earnings in the whole previous 12 months (or fewer if they have worked for less time than this, including a part month calculation if they were taken in February).

### Are any individuals eligible who may not be employees?

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE:

- office holders (including company directors)
- salaried members of Limited Liability Partnerships (LLPs)
- agency workers (including those employed by umbrella companies)
- limb (b) workers

### Can an employee work for another employer after being furloughed?

Yes, however if there is a contractual clause expressly stating they can not take a different job the employee must ask their employer first.

### When will companies receive the money?

HMRC is working to get the new online portal that supports the scheme up and running. We understand HMRC hoping to make payments by the end of April and will pay the grant into a UK bank account. Entire grant to be paid to furloughed employee. **Note:** HMRC will retain right to claw back monies from employers where claims are found to have been made erroneously or fraudulently.

### Can employers who uses the HVAC/BESA Operative National Agreement furlough Operatives?

Yes, the parties to the Agreement – BESA and Unite the Union – recently agreed that employers may participate in the Scheme - [BESA-Unite Agreement](#).