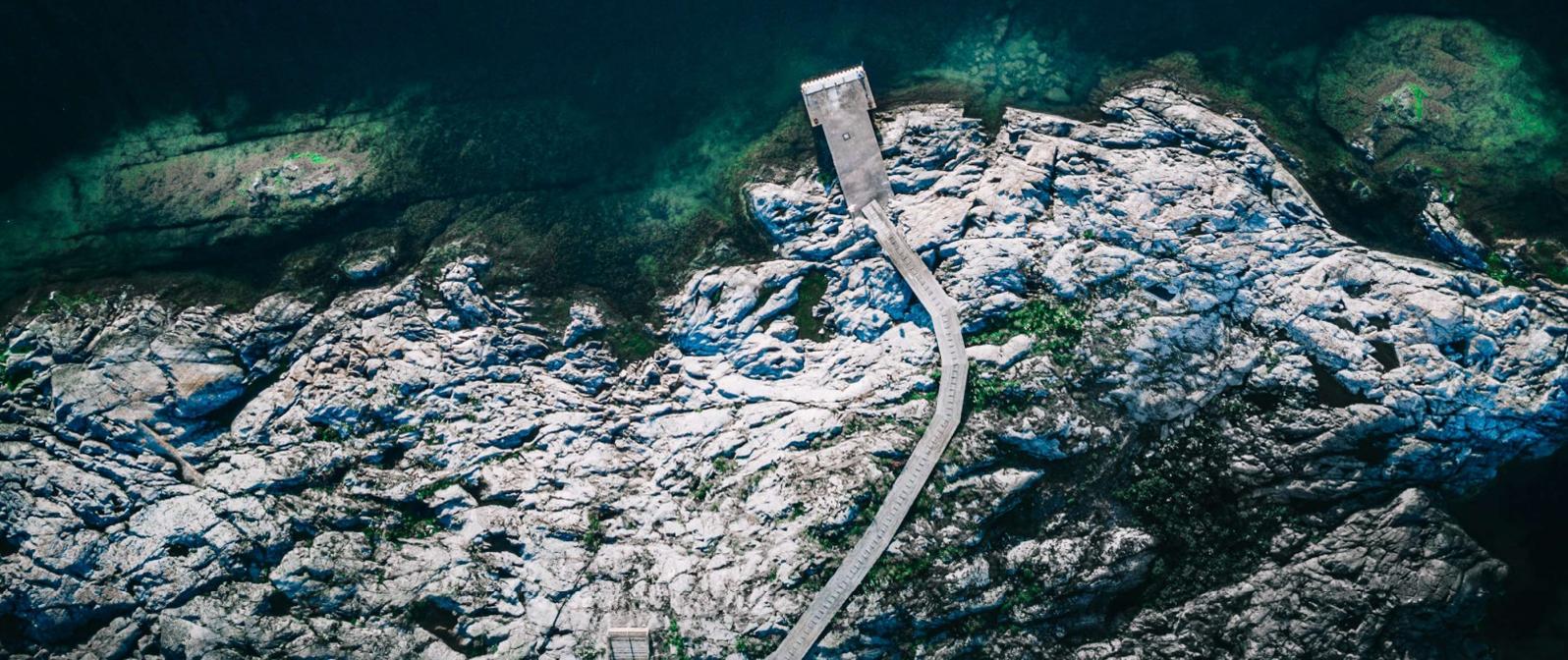


Covid-19 Update 24.3.20



Covid-19

In this update we outline three key government support measures - The Coronavirus Job Retention Scheme, the Coronavirus Business Interruption Loan and VAT Payment Deferral. For further advice on key planning actions please see our update of 20th March 2020.

We have been working closely with clients as they navigate these challenging times. As key decisions have to be made quickly, please be reassured that our expert team is available outside of working hours for advice and support. Immediate points of contact are:

Stephen McConnell, Business Services Partner

For enquires relating to cash flow, government support, applying for business grants, loans and funding.

Tel: 07801 549351

Email: stephenmccconnell@bakertillymm.co.uk

Donal Laverty, Consulting Partner

For enquiries relating to HR and company/employee restructuring

Tel: 07803 508675

Email: donallaverty@bakertillymm.co.uk

Our Partner group is available by phone outside normal working hours as well as Saturday and Sunday. All Partners, Directors and senior staff have access to email at all times. Additional out of hours contact details:

Anne Fitzpatrick, Partner	07712 877606
John O'Rourke, Partner	07966 478026
Joanne Small, Partner	07715 419839
Tom Penman, Partner	07810 636804
David McClean, Partner	07984 823800

Coronavirus Job Retention Scheme

The new scheme announced by the Chancellor is rich in numbers but lacking in detail and the difficulty at this juncture is understanding key concerns around eligibility, access and timing both for employers and employees.

It is important at the outset to note that that the Chancellor has confirmed that the scheme does not override existing employment law principles, so it's important in any rush to implement this scheme that core employment principles are respected and employee rights protected.

- It's helpful to understand the reasons for the introduction of the CJRS; it has been introduced to encourage businesses to follow the latest medical advice for Coronavirus and ensure businesses who rely on physical interactions close their doors to the public.
- Where a business can carry on without those physical interactions, for instance by working remotely, it should be business as usual and the policy doesn't appear to be designed as a catch all wage subsidy for the UK workforce.

The key features:

- Open to any employer in the UK
- 80% of employees' gross salary will be covered by a Government grant
- Backdated to commence 1 March 2020, and the scheme is due to open before the end of April.
- Currently forecast to continue for at least 3 months and can include workers who were in employment on 28 February 2020.

To claim under the scheme, employers will need to:

- Designate affected employees as ‘furloughed workers’ and notify employees of this change. Changing the status of employees remains subject to the existing employment law, and depending on the employment contract, may be subject to negotiation; and
- Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal – details to follow per the Government/HMRC.

1. What is the scheme?

The scheme is a Government initiative whereby employers are being encouraged not to move to redundancy or lay off situations, but instead register for this scheme which allows employees to stay on payroll. Employees will not be officially on notice of redundancy or lay-off and will receive up to 80% of ‘wages’ to a cap of £2,500 per month (for at least three months).

2. What is furloughing

Furloughed workers are “workforce who remain on payroll but are temporarily not working during the coronavirus outbreak”.

3. Access to the Scheme?

It will be administered by HMRC, with a bespoke 'Portal' created to administer the Scheme.

Some legal points to bear in mind

- It is important to understand that employees can't 'elect' to be furloughed – it is exclusively for the employer to give this designation.
- Employment law rules will not be overridden however, so make sure that any designation is based on objectively justifiable decision making – unfair selection or designation will attract the same criticism from employees as normal (and potentially any subsequent Tribunal hearing in the case of a claim)
- The Government is expected to publish more information on the Scheme and the Portal this week.

4. Which employees are eligible?

All employees who work for an organisation who is contemplating redundancies as a consequence of the COVID-19 pandemic are eligible.

It is our understanding that the scheme does not appear to be designed to apply to businesses which were already in deep financial difficulty and the criteria to assess this has yet to be provided.

The scheme is backdated to 01 March 2020.

5. What is the process to transfer an employee to be ‘furlough’?

The employer must note that changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation. This means that in the absence of any contractual rights to the contrary, employers would be wise to consult with employees and seek agreement about furloughing before doing so.

6. Who pays the money – and when?

The expectation is that the employer will continue to process salary through payroll as normal. The employer will in due course recover the monies from HMRC but this can only happen after the Portal is established, and employers have satisfied eligibility criteria.

Present expectations are that the money won't be available until April and is expected to run on a monthly, not weekly cycle.

7. How much will be paid?

The government will pay up to £2,500 cap. The details are still being worked out however it is apparent that given the proposed £2,500 per month contribution cap, it appears that this scheme will be of most benefit in relation to those employees earning a salary of £37,500 or less.

8. Can employees access the scheme and work from home?

No, the policy doesn't appear to be designed as a catch all wage subsidy for the UK workforce. The scheme is not designed to underwrite employer costs for employees working from home. It is designed to support those employees for whom the employer has no work and would otherwise have identified for redundancy, or temporary lay-off.

9. Is the employer obliged to top-up the payment?

No. The employer may elect to top-up the additional 20%, but there is no obligation to do so. Each employer will respond in different ways.

10. Will employees who are 'furloughed' continue to accrue holiday pay?

Yes.

11. How does the scheme affect maternity, paternity or long term sick?

Any employee who is currently in a different statutory or contractual category – for example on Maternity leave and benefitting from Statutory Maternity Pay, will continue to avail of that categorisation, not the present scheme as far as we can tell at this point and is subject to change.

12. Are employees made redundant?

No. Workers who are furloughed are not being dismissed or made redundant. This means furloughed employees are not entitled to redundancy payments.

13. What if the employee refuses to be put on "furlough leave", do I have to pay them full pay?

In the immediate short term – yes. The Employer may well designate – but the Employer must still consult, and the employee must still consent, before this should be implemented. To do otherwise would give employees some employment related claims, including those for unlawful deductions and breach of contract perhaps – but such a reaction by an employee would be short sighted as they may well be hastening their own lay-off or compulsory redundancy.

14. Can an employer delay making payment to employees until they receive funding from the CJRS?

It would appear from the initial guidance that employers will have to make the payment initially, and are then reimbursed by the CJRS. However, there is no guidance on whether it will be possible to delay payment of wages becoming due this month until April, when the scheme should be up and running. The guidance does point to the ability to use the business disruption loan suggesting this can be used to bridge the cash flow until the employer is reimbursed by CJRS.

15. Once furloughed, can an employee return to work, then subsequently be furloughed again and still be entitled to CJRS? If so, with what regularity can you furlough an employee?

It appears unlikely given the legal context above, but still requires clarification.

16. Will the amounts paid under the CJRS be liable to PAYE and national insurance?

It would appear as though the CJRS would be a simple subsidy of income, which would mean the payment would be earnings in the employee's hands and therefore should be liable to PAYE and national insurance, but confirmation of this is needed. If the CJRS payment is liable to PAYE and national insurance, employers will need to foot the bill for the employer's national insurance cost due on the payments. Employers may be able to manage the employer's national insurance liability by applying for either a time to pay (TTP) arrangement or through the use of the business disruption loan.

There are still some gaps, including:

- We are waiting for clarification on whether workers on sick leave can be furloughed in the same way as active workers.
- The guidance does not currently specify how this affects workers in receipt of SSP (for Coronavirus reasons or otherwise).
- As employment/engagement continues most other terms of employment will also continue. This could include pension obligations.

It is very early days and we expect to be able to provide further information during the course of next week as the Government works this through. We will update you on this as soon as we can.

Employers – what to do now

Employers should consider whether they can afford to put any cost reduction plans on even a short hold, as further details of the scheme should be published imminently. If they are able to hold on, then its time to start to plan who could be furloughed. If employers can not hold off from making decisions any longer, particularly as the scheme will only be backdated for those who were furloughed at the relevant time, employers should take advice so that they can do this in such a way as to maximise their chances of being able to claim the grant whilst minimising legal risks.

Key things to consider;

- a) If furloughing will mean selecting some people in the same role to come to work and some to stay at home, employers should consider how they might select who falls into each group.
- b) Employers should also consider how they would implement furlough if there are no contractual terms. We recognise that the underpinning employment legislation needs to be respected and rules are being pushed aside just now however it still exists and when all of this is over they will still want an engaged workforce who will remember how they were treated.
- c) Employers need to reflect on whether they will top up the 20% of pay not covered by the government.
- d) As it appears that the first payments of the scheme will not be made until mid-April, employers will need to fund the costs in the meantime. Can you afford to do that? If not then employers should reflect on how to access a Coronavirus Business Interruption Loan to assist with this.

For more information contact Stephen McConnell, Donal Lavery, Michael Branniff, Business Services Director Tel 07787 116531 or payroll@bakertillymm.co.uk

Coronavirus Business Interruption Loan Scheme

The Coronavirus Business Interruption Loan Scheme (CBILS) is designed to assist qualifying businesses during these unprecedented times. It is likely that the scheme will be open for applications commencing from the week of 23 March 2020. Once all of the details are known we will be able to work with you in applying for these loans.

The Scheme aims to support long-term viable businesses who may need to respond to cashflow pressures by seeking additional finance. The loan will be provided by the British Business Bank through participating providers during the Covid-19 outbreak.

Key features

- **Up to £5m facility:** The maximum value of a facility provided under the scheme will be £5m, available on repayment terms of up to six years.
- **80% guarantee:** The scheme provides the lender with a government-backed, partial guarantee (80%) against the outstanding facility balance, subject to an overall cap per lender.
- **No guarantee fee for SMEs to access the scheme:** No fee for smaller businesses. Lenders will pay a fee to access the scheme.
- **Interest and fees paid by Government for 12 months:** The Government will make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments.
- **Finance terms:** Finance terms are up to six years for term loans and asset finance facilities. For overdrafts and invoice finance facilities, terms will be up to three years.
- **Security:** At the discretion of the lender, the scheme may be used for unsecured lending for facilities of £250,000 and under. For facilities above £250,000, the lender must establish a lack or absence of security prior to businesses using CBILS. If the lender can offer finance on normal commercial terms without the need to make use of the scheme, they will do so.

The borrower always remains 100% liable for the debt.

Once all the details are known we will be able to help clients apply for the scheme, but you should start preparing:

- The last 6 months bank statements
- Latest full year end filed accounts.
- YTD Management Figures
- Draft 12 month forecast

How can I access the scheme?

CBILS is available through the British Business Bank's 40+ accredited lenders, which are listed on the British Business Bank website here; <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruptionloan-scheme-cbils/accredited-lenders/>

In the first instance, businesses should approach their own provider – ideally via the lender's website. They may also consider approaching other lenders if they are unable to access the finance they need.

Decision-making on whether you are eligible for CBILS is fully delegated to the 40+ accredited CBILS lenders. These lenders range from highstreet banks, to challenger banks, asset-based lenders and smaller specialist local lenders.

Given there is likely to be a big demand for facilities once the scheme goes live, we ask you to please:

- Consider applying via the lender's website in the first instance. Telephone lines are likely to be busy and branches may have limited capacity to handle enquires due to social distancing
- Consider the urgency of your need – it is possible that some businesses may be looking for regular longer-term finance rather than 'emergency' finance, and there may other businesses with a more urgent need to speak with a lender.

VAT Payment Deferral

What we know

- The deferral period will apply from 20 March 2020 until 30 June 2020.
- All UK businesses are eligible and it automatically applies. There is no need to speak to HMRC to arrange or agree this.

What does this mean for my business

- Businesses with a VAT payment due in this period will not need to make that payment to HMRC.
- Whilst the guidance does not explicitly state that there will be no penalties for late payment of VAT it does for income tax – "No penalties or interest for late payment will be charged in the deferral period". There isn't an interest regime for late payment of VAT returns – only the possibility of default surcharges. These cannot apply where the government has announced a deferral period.
- This affects the following VAT return periods:
 - 02/20 period ending 29 February.
 - 03/20 period ending 31 March.
 - 04/20 period ending 30 April.
- The period of deferral will be until the end of the 20/21 tax year.
- Amounts due during this deferral period must be paid by 5 April 2021.

What happens if I am a large business on payments on account?

- You will not be required to pay your monthly instalments during the deferral period.
- If you have a 05/20 VAT return there is a possibility that you may also be able to defer this VAT payment as well as the 02/20 return. This is because your due date for payment is 30th June, unlike other taxpayers where the due date will be 7th July. However, this is probably not the intention of the Chancellor and it is likely that this may be clarified in the coming days.



Is there anything else I should know?

- We recommend that all businesses continue to prepare their VAT returns and submit them on time. This is to protect against the default surcharge regime after the deferral period.
- Please cancel your direct debit with HMRC for this period.
- If the return is a repayment rather than a payment, then it will not be affected by this arrangement and HMRC will process it as normal.
- Unfortunately the deferral scheme does not apply to non-UK businesses which are VAT registered in the UK. These businesses must continue to submit VAT returns and pay the liability on time.
- Normal time to pay arrangements can still be discussed and agreed with HMRC for payments which are due outside this deferral period. Please speak to us to discuss the best way to approach HMRC in these circumstances.

Please contact us to discuss any aspect in more detail.

We understand the tremendous pressure many business owners are currently facing and would urge you to contact us out of normal working hours if it would be of assistance.

Contact details

Baker Tilly Mooney Moore
17 Clarendon Road
Clarendon Dock
Belfast, BT1 3BG
Tel: +44 (0) 28 9032 3466
Email: accountants@bakertillymm.co.uk



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