

Circular STS 03/20 – Guidance on the Use of Coronavirus Job Retention Scheme in the College Sector (Support Staff)

This circular provides advice and guidance on the use of the Coronavirus Job Retention Scheme (CJRS) in the college sector. This follows the issuing of further guidance by the Scottish Funding Council (SFC) on 23 April 2020 (SFC Guidance) and the Department for Education (DfE) on 17 April 2020 (DfE Guidance) regarding the CJRS and Scottish colleges and universities.

Key Points from the SFC/DfE Guidance

- The [DfE Guidance](#) confirms that “*all colleges and universities are eligible to apply to the CJRS, where specific conditions apply*”.
- In light of the above, [SFC Guidance](#) states that “*Scottish colleges and universities should give full consideration to these schemes and should apply to them, where allowed, to maximise the contribution to their mitigation strategies*”.
- The SFC “*expects each college or university to engage at the earliest opportunity with its recognised trade unions where plans are being considered to furlough staff*” under the CJRS.
- The Scottish Government is “*encouraging colleges and universities to top up the 80% grant from HMRC, where possible, to maintain staff income at normal levels*”.
- The DfE Guidance is clear that where public funding is continuing to be received for roles, furlough would not be appropriate. However, the DfE Guidance states that the reality of mixed public and private funding sources is recognised and, where it is difficult to distinguish whether staff are funded through continuing public funding, it expects that the total proportion of staff (based on gross payroll) that are retained (i.e. not furloughed) should, as a minimum, be equivalent to the continuing public income, as a proportion of all income that the institution usually receives. The SFC Guidance, therefore, states that colleges should therefore not be deterred from applying to the CJRS simply because it is difficult to distinguish how different funding sources relate to individual employees.
- The CJRS is currently anticipated to last until **30 June 2020**.

Issues to Consider

1. Eligibility – Public Funding

The guidance is clear in that the Government does not anticipate significant claims from publicly funded institutions. However, it suggests that staff who work in areas of a college that are not primarily funded by the Government or where public income has reduced or non-public income has ceased or reduced, it may be appropriate to seek support from the CJRS. However, employees will only be eligible for furlough if they meet all of the following conditions:

- the employee works in an area of business where services are temporarily not required and whose salary is not covered by public funding;
- the employee would otherwise be made redundant or laid off;
- the employee is not involved in delivering provision that has already been funded;
- (where appropriate) the employee is not required to deliver provision for a child of a critical worker and/or vulnerable child; and
- the grant from the CJRS would not duplicate other public grants received and would not lead to financial reserves being created.

2. Selection

Where furloughing is being considered, the DfE states that “*colleges should ensure that they take a fair and reasonable approach to all staff, including, part-time, sessional and temporary staff, reflective of good HR practice and legal requirements*”. Colleges should seek advice accordingly and ensure that their audit trail (please see section 3) sets out both how selected staff have met the above criteria and been fairly selected.

3. Engagement with Trade Unions

SFC expects colleges to engage with its recognised trade unions at the earliest opportunity regarding potential furlough with a view to reaching a local collective agreement.

Following any collective agreement, it will be necessary to communicate and seek agreement from the individually affected staff. Such agreement should be sought in writing to form part of the audit trail. The clauses in the model may be helpful in communicating with staff on the terms of the furlough.

A template model provided by the trade unions is attached as Appendix 1 to this guidance.

4. Annual Leave

It is understood that employees can take holidays whilst they are on furlough and, if doing so, they should be paid normal holiday pay and not furlough pay (**colleges are strongly encouraged by the Scottish Government to top up pay to 100% in any event**). Furloughed employee's leave will be treated as per [Circular STS 02/20 – COVID-19 Annual Leave \(Support Staff\)](#).

5. Work During Furlough

When on furlough an employee cannot undertake work for, or on behalf of, the organisation or any linked or associated organisation. This includes providing services and generating revenue. Employees who are furloughed may undertake work or volunteering at another employer with the permission of the employer who has furloughed them. Employees may also undertake agreed job related training as long as it doesn't involve them in providing services to, or generating revenue for or on behalf of their organisation.

6. Trade Union Representatives

Whilst on furlough, employees who are union or non-union representatives may undertake duties and activities for the purpose of individual or collective representation of employees or other workers. However, in doing this, they must not provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation.

7. Terms and Conditions and Pay

During the period of furlough, an employee's contractual terms and conditions and other employment rights remain in place and continue to accrue. Upon the ending of the furlough period, employees will revert to their pre-scheme terms and conditions.

No claim can be made to the CJRS for employees in receipt of Statutory Maternity, Paternity, Adoption, Shared Parental Pay or Statutory Sick Pay.

Clarification

If any clarification is sought this should be directed to the joint secretaries, heather.stevenson@collegesscotland.ac.uk or john.gallacher@unison.co.uk. A joint response will be provided to all points of clarification.

6 May 2020

Template – Model Collective Agreement

(Template provided by Trade Union)

MEMORANDUM OF UNDERSTANDING BETWEEN:

UNION(S)
&
EMPLOYER NAME

UNION(S) NAME and *EMPLOYER NAME* ("the Employer") agree the following Memorandum of Understanding on *DATE* that:

1. The Employer will follow the Government's Job Retention Scheme ("JRS") guidance as amended from time to time.
2. "The employer carries sole responsibility for complying with the entirety of the CJRS scheme as set out in the UK Treasury Direction. In particular, the employer shall take such steps as are required by the Treasury Direction AND HMRC Guidance to ensure that all employees "have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment".
3. The Employer will agree that where staff are to be furloughed, this will be at 100% of their regular salaries (especially those on National Minimum Wage / National Living Wage).
4. The 100% preservation of contractual benefits shall also apply to all emoluments including but not limited to pension contributions, sick pay, and holiday pay.
5. The Employer will consult with Unions over those staff they choose to furlough. The term "furlough" is to be understood as it is used in the JRS. The Trades Unions reserve the right to object to any decision to furlough staff and may take such action as it decides. The Trades Unions and the Employer understand that any decision to furlough rests solely with the Employer.
6. Where the Employer employs staff on zero hours contracts, who are unable to work, the Employer agrees to pay such staff based on their previous average monthly pay.
7. The Employer agrees to comply with the Working Time (Coronavirus) Amendment Regulations 2020 and permit the carryover of annual leave where staff are unable to take their annual leave. The agreed NJNC statement contained in **Circular STS 02/20 – COVID-19 Annual Leave (Support Staff)**, on the use of annual leave during COVID will apply equally to staff who may be furloughed.
8. The Employer agrees that trade union representatives will continue to be paid in line with their existing trade union agreements as representatives are still required to conduct trade union activities and provide services.
9. Any contract variations implemented to comply with CJRS rules, shall be temporary and shall cease to have contractual effect at the conclusion of the Furlough period. This clause shall operate without prejudice to any contract variations ancillary to the those associated with the requirements of the CJRS.

Signed and dated

For and on behalf of the Employer:

For and on behalf of the Unions: