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# COVID 19 – Government Support For Businesses

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# The government has introduced a large number of support schemes for businesses suffering as a result of the COVID-19 lockdown.

Many of these schemes are not fully in place yet, for example the online portal to register for the well-known furlough scheme is not yet open. However, it is worth considering whether any of them can assist your business in emerging from the lock-down in the best shape possible. We have summarised below the terms of some of the key schemes.

# Coronavirus Job Retention Scheme

This is the government's furlough scheme for employees, and will be open for all UK employers who had created and started a PAYE payroll scheme on or before 28 February 2020. It will run for a minimum of three months from 1 March 2020. The scheme rules were updated on 4 April 2020.

## The Grant

As is well known, this scheme allows employers to 80% of furloughed employees' usual monthly wage costs, up to £2,500 per month. The associated employer's NIC and minimum auto-enrolment employer contributions will be added to this.

Previously the scheme rules provided that commission, fees and bonuses could not be taken into account in determining monthly wage costs. However, this was changed on 4 April so that employers can now claim for any regular payments they are obliged to pay employees. This includes past overtime, fees and compulsory commission payments. However, discretionary bonuses (including tips) and commission payments and non-cash payments cannot be claimed for.

An employer can, if it wishes, top up employees' pay. Of course, neither any such top up payments, nor any consequential employers NIC payments will be covered by the grant. Similarly, employer pension contributions above the minimum will not be covered.

For these purposes "employees" are broadly staff who are paid through PAYE. This can include not just straightforward employees but also company directors, people who are for tax purposes salaried members of LLPs and "limb (b)" workers. Agency workers will also be treated as employees, if they are paid under PAYE, but their employer will likely be the agency rather than the organisation they provide services to.

Determining relevant pay for purely salaried employees is fairly straightforward – it is broadly just the employee's actual pre-tax salary on 28 February 2020. For employees who are on variable pay (such as those paid hourly), an employer can claim the higher of:

- **the same month's earning from the previous year; and**
- **average monthly earnings from the 2019-20 tax year.**

There are special rules for employees who have worked for less than a year, those on statutory sick pay, maternity/paternity leave and similar schemes.

The government now states that the relevant pay does not include the cost of non-monetary benefits provided to employees, including taxable benefits in kind and benefits provided through salary sacrifice schemes (including pension contributions). The employer does still remain obliged to provide benefits those to furloughed employees. If an employee wishes to leave any salary sacrifice scheme, HMRC has agreed that COVID-19 amounts to a life change which will justify doing so, if the relevant contract is updated accordingly. This is most likely to happen in relation to additional pension contributions.

It is not yet clear how holidays and holiday pay will be treated under the scheme.

The full amount of the grant received for gross pay must be paid to employees (subject to tax and minimum pension deductions in the usual way). It is not permitted to charge any fees on the money granted.

## What can furloughed employees do?

An employee who is furloughed cannot undertake work for or on behalf of the organisation they work for (note that this is wider than their employer, and would catch other group companies for example). This means they can't generate revenue or provide services.

However, they are permitted undertake voluntary work or training. The government's view is that employees should be encouraged to undertake training while on furlough.

Statutory directors can be furloughed, but are only allowed to do no more than would reasonably be judged necessary for the purpose of fulfilling their statutory duties. They are not permitted to 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.

This is likely to make it difficult for directors, particularly directors of small or personal service companies to take advantage of the scheme as doing so would prevent them undertaking marketing activities to drum up new business.

The minimum period for a furlough is three weeks.

## National Minimum Wage/National Living Wage

Generally, the national minimum wage and national living wage do not apply to furloughed employees, as they are not working.

However, if they are undertaking training, they must be paid at least the national minimum wage / national living wage for the time they are training.

## Tax and Pensions

Any payments made to furloughed employees will be treated as normal pay so PAYE, national insurance and pension deductions will need to be made in the usual way. Employer's NIC will also need to be paid.

From an employer perspective, any grants received under the scheme will need to be accounted for as income in its tax return. However, as there should be matching payments out to employees, HMRC and pension schemes there should be corresponding expenses and the net effect should be neutral.

## Employment Law

Employment law continues to apply during the period of the scheme, and employees have the same rights as they did before. This includes maternity (and similar) rights, protection against unfair dismissal and discrimination, equality rights, rights to redundancy payments, and rights to statutory sick pay.

It is therefore very important to make sure a fair process is undertaken to determine which employees are furloughed. Our employment team can provide advice on an appropriate process.

## How to Furlough an Employee

Once the decision has been made as to which employees are to furloughed, the employer should write to each affected employee confirming that they have been furloughed and keep a record of the communication. This communication could also include further information, such as the amount of any top-up payments and expected length of the furlough. If the furlough is to be extended a further communication confirming this should be sent and a record retained. All furlough notices must be retained for at least five years, so that HMRC can inspect them if they wish to.

The furlough period will commence from when the employee stops work, not when the decision is made to furlough them or notice is given.

Employees can be furloughed multiple times, but the three week minimum period will apply each time.

## How to Claim

As mentioned above, the government intends to establish an online portal for claims but it is not yet open. To make a claim once the portal opens, employers will need to provide:

- **their ePAYE reference number**
- **the number of employees being furloughed**
- **the claim period (start and end date)**
- **amount claimed (per the minimum length of furloughing of 3 weeks)**
- **their UK bank account number and sort code**
- **a contact name**
- **a contact phone number.**

Claims can be made once every three weeks, and can be backdated to 1 March 2020 if applicable.

Once HMRC has processed and approved the claim, a payment of the grant awarded will be made by BACS to the bank account specified.

## Alternatives to the Furlough Scheme

In addition to the furlough scheme, it may be worth businesses considering whether they can put employees on layoff or short term working (as our employment team blogged about here), but it is important to note that if an employee continues to work for reduced hours or pay they will not qualify for the furlough scheme.

# Self-Employed Income Support Scheme

The self-employed income support scheme is the equivalent of the furlough scheme for self-employed people.

## The Grant

This scheme It allows self-employed people to claim a grant of up to 80% of trading profits up to a maximum of £2,500 per month for the next 3 months. This grant will be calculated by reference to average profits from the tax years (where applicable):

- **2016 to 2017**
- **2017 to 2018**
- **2018 to 2019.**

To work out the average HMRC will add together the total trading profit for the 3 tax years (where applicable) then divide by 3 (where applicable), and use this to calculate a monthly amount.

Claimants under this scheme who are claiming tax credits will need to include these in their income.

## Qualifying Criteria

Individuals can apply for the grant if they were self-employed or in partnership and they:

- **have submitted their Income Tax Self-Assessment tax return for the tax year 2018-19**
- **traded in the tax year 2019-20**
- **are trading when they apply, or would be except for COVID-19**
- **intend to continue to trade in the tax year 2020-21; and**
- **have lost trading/partnership trading profits due to COVID-19.**

In addition, the self-employed trading profits must be less than £50,000 and more than half of the individual's income must have come from self-employment. This is determined by at least one of the following conditions being true:

- **having trading profits/partnership trading profits in 2018-19 of less than £50,000 with these profits constituting more than half of total taxable income**
- **having average trading profits in 2016-17, 2017-18, and 2018-19 of less than £50,000 with these profits constituting more than half of average taxable income in the same period.**

If the individual started trading between 2016 and 2019, HMRC will only use those years for which a Self-Assessment tax return was filed.

## How to Claim

This scheme is not yet open for applications. HMRC will contact people who are eligible and invite them to apply online.

HMRC has emphasised that individuals should not contact them about the scheme now, as they consider that dealing with these contacts will slow down implementation. They have also emphasised that self-employed people should be cautious of phishing attempts in relation to the scheme.

## Payment

HMRC will pay the grant directly into a qualifying person's bank account, in one instalment.

# Coronavirus Business Interruption Loan Scheme (“CBILS”)

This is the loan guarantee scheme the government has established to support small and medium sized businesses. The scheme rules were updated on 3 April 2020, with access criteria relaxed, so if businesses have previously been unable to obtain support it may be worth trying again.

## The Scheme

CBILS is operated through the British Business Bank, and allows accredited lenders to provide finance facilities of up to £5 million on repayment terms of up to six years with the support of a government guarantee of 80% of the loan amount.

In addition to providing the guarantee, the government will also make a Business Interruption Payment to cover the interest and any lender-levied fees in the first 12 months of any facility under the scheme.

Lenders are now not permitted to take personal guarantees in any form for CBILS facilities under £250,000. For CBILS facilities over £250,000 personal guarantees may still be required but must exclude the guarantor’s principle private residence and be capped at a maximum of 20% of the outstanding balance of the facility after the proceeds of business assets as been applied.

One of the key changes made on 3 April is that eligible businesses are no longer required to make use of funding on normal commercial terms rather than the scheme if they can. This should make it much easier for businesses to take advantage of the scheme.

It is important to note that the borrower remains liable for the full amount of the debt, despite the government guarantee.

## Eligibility

As long as they are not operating in an excluded sector, businesses which:

- **are UK based in their business activity**
- **have an annual turnover of £45 million or less**
- **have a borrowing proposal which the lender would consider viable absent the impact of COVID-19 and**
- **self-certify that they have been adversely impacted by COVID-19**

should be eligible. However, it should be noted that the turnover test is carried out on a group basis, not by individual company. Where there is group turnover of more than £45 million in the 12 months prior to the date of application, it may be possible to take advantage of the upcoming Coronavirus Large Business Interruption Loan Scheme.

The excluded sectors are

- **Banks and building societies**
- **Insurers and reinsurers (but not insurance brokers)**
- **Public-sector organisations**
- **Further education establishments, if they are grant funded and**
- **state-funded primary and secondary schools**

To help businesses assess eligibility the British Business Bank has produced a Quick Eligibility Checklist.

## Applications

As noted above, the scheme is available through accredited lenders, a list of whom can be found here.

The British Business bank recommends that in the first instance, businesses should approach their existing bankers. However, they are free to approach other lenders if they are unable to access the finance they need through their existing bank. Many lenders are struggling with the volume of requests for CBILS loans they are receiving, and taking using existing banking relationships in the first instance is strongly recommended.

It is for the accredited lenders to decide whether a potential borrower is eligible for the scheme.

## FAQS

The British Business Bank has produced some FAQS on the scheme, which may prove useful.

# Coronavirus Large Business Interruption Loan Scheme

As a consequence of controversy around businesses being too large to access the Coronavirus Business Interruption Loan Scheme ("CBILS") but too small to take advantage of the Bank of England's COVID-19 Corporate Financing Facility (referred to below) the government has indicated it intends to introduce a further scheme, similar to CBILS, for larger businesses.

It is important to note that this scheme has not yet launched – the government has indicated it expects the scheme to launch later this month.

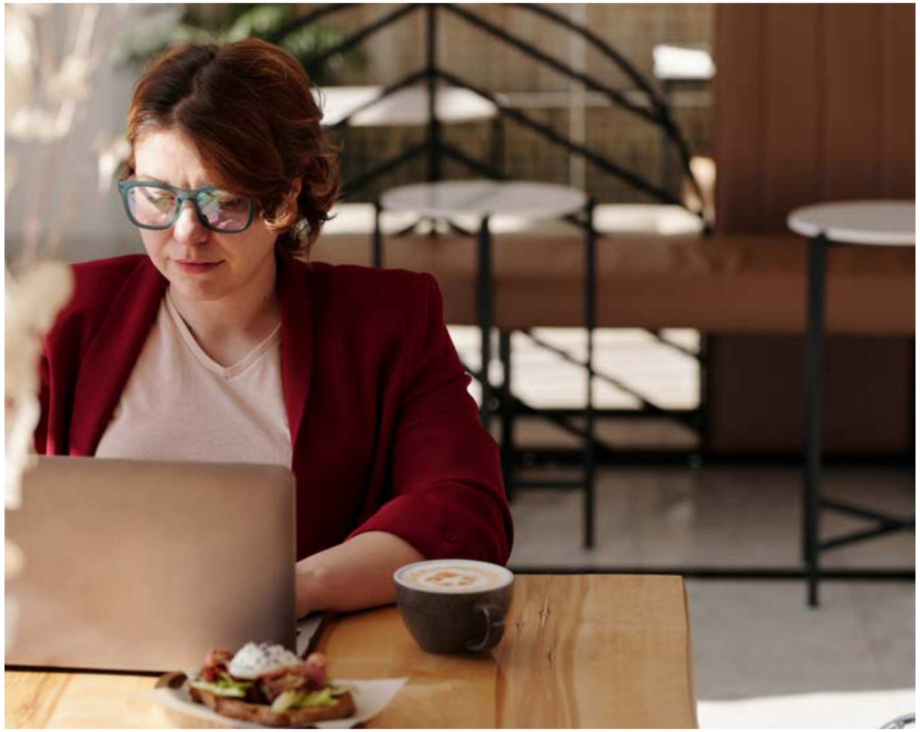
## The Scheme

Under the scheme, the government will provide guarantees to banks to make loans of up to £25 million to firms with an annual turnover of between £45 million and £500 million, as with CBILS the guarantee will be 80% of the sum lent, and provided to the bank not the borrower. Therefore the borrower will remain fully responsible for the loan.

## Eligibility

To be eligible, a business must:

- **be UK-based in its business activity**
- **have an annual turnover between £45 million and £500 million**
- **be unable to secure regular commercial financing**
- **have a borrowing proposal which the lender:**
    - **would consider viable, were it not for the COVID-19 pandemic**
    - **believes will enable it to trade out of any short-term to medium-term difficulty**



The last two requirements may make accessing the scheme difficult for many businesses. As has been seen with CBILS the requirement of not being able to secure regular commercial funding may result in businesses being pushed towards expensive or highly secured existing products. The requirement of the proposal being one which the lender believes will enable a business to trade out of short- to medium-term difficulties will be increasingly challenging as lost sales due to the lock down with unchanged fixed costs (except where the furloughing scheme applies) increasingly damage businesses' asset base and reserves. It should be noted that CBILS formerly included a similar "trading out of difficulties" requirement, but this has now been removed.

The excluded sectors for this scheme are:

- **banks and building societies**
- **insurers and reinsurers (but not insurance brokers)**
- **public-sector organisations, including state-funded primary and secondary schools**

## Applications

It is anticipated that the scheme will be accessed in much the same way as CBILS.

# COVID-19 Corporate Financing Facility

This scheme applies to larger corporate entities, and permits the Bank of England to help them deal with cash flow issues arising from COVID-19 by buying short-term debt in the form of commercial paper.

## The Scheme

Under the scheme, the Bank can short-term unsecured debt issued by companies (known as commercial paper) which:

- **is issued using ICMA market standard documentation, or a simplified version of that documentation. The Bank has produced pre-approved simplified forms it encourages companies to use**
- **has a maturity of one week to one year**
- **had, where available, a credit rating of A-3 / P-3 / F-3 / R3 from at least one of Standard & Poor's, Moody's, Fitch and DBRS Morningstar as at 1 March 2020**
- **is issued directly into Euroclear and/or Clearstream and**
- **does not include non-standard terms such as subordination or extendibility.**

There is no need for companies to have previously issued commercial paper to use the scheme.

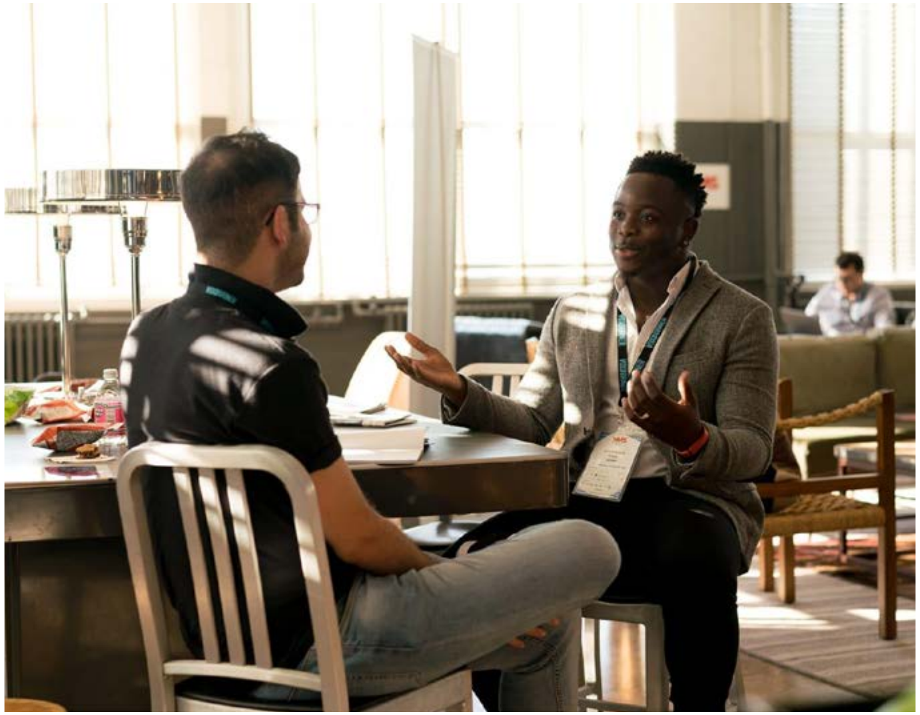
There is a minimum purchase size of £1million, and offers must be rounded to the nearest £100,000.

Pricing of the purchases will be based on the terms applicable in the markets in the period before the impact of COVID-19. For primary purchases this will be determined by reference to a spread (determined on the date of purchase) above a reference rate based on the then-current sterling overnight index swap rate. For a secondary purchase, the price will be based on the lower of amortised cost from the issue price and the price which would have been paid in a primary purchase. There is also a fee (currently 5bps) for use of the secondary facility.

## Eligibility

Eligible companies are broadly those which:

- **make a material contribution to the UK economy**
- **on 1 March 2020 had a short-term or long-term investment grade credit rating from at least one of the four major credit rating agencies and did not have sub-investment grade credit rating from any of those agencies**



- **are not in a disqualified sector. This excludes banks, building societies, insurance companies and other financial sector entities regulated by the Bank or FCA; leveraged investment vehicles and companies from groups which are predominantly active in businesses subject to financial sector regulation; and public bodies or authorities, entities governed by public law and public undertakings.**

If a company does not have a credit rating it should contact its bank, as if its bank is of the view that it is of investment-grade quality the Bank of England may be prepared to consider treating it as eligible. It could also seek to obtain a credit assessment confirming investment-grade credit quality from one of the ratings agencies.

## Application

Companies which wish to take advantage of the scheme need to contact their bank in the first instance. However not all banks issue commercial paper, and there is a list of relevant issuing desks maintained by UK Finance.

# HMRC Schemes

## VAT Deferral

HMRC has decided that it will allow businesses to defer Valued Added Tax ("VAT") payments due between 20 March 2020 and 30 June 2020, if they wish to do so, and that it will not charge interest or penalties on any amount deferred as a result.

This applies to UK VAT registered business and have a VAT payment due between 20 March 2020 and 30 June 2020.

Any sums deferred must be paid on or before 31 March 2021, and HMRC has indicated further information about how to repay deferred VAT will be available "soon".

VAT returns still need to be done on time, and HMRC is continuing to process VAT reclaims and refunds as usual.

There is no need to inform HMRC that VAT payment is being deferred, but of course any direct debits for payment of VAT will need to be cancelled in good time.

Please note this scheme does not apply to VAT MOSS payments.

## Self-Assessment Payments on Account

Self-employed people who are having difficulties in paying their self-assessment payments on account due on 31 July 2020 can defer payment until January 2021. However, they do not have to do so.

There is no application required to take advantage of this scheme, and HMRC will not levy penalties or interest for late payment will be charged if payment is deferred until 31 January 2021.

During the deferral period self-employed people may be able to set up a budget payment plan to help pay the deferred payment on account when it comes due.

## Time to Pay

HMRC has for some time operated a time to pay scheme for businesses which are struggling to pay their tax bills. This allows for payment arrangements to be agreed on a case-by-case basis and tailored to individual circumstances and liabilities. HMRC's guidance on this is here.

## General

For the above schemes, businesses should be conscious of any banking covenants they may have given, as taking advantage of the schemes may trigger events of default. It may, therefore, be appropriate to agree with their bankers that they can take advantage of these schemes before they do so.

# Business Rates Schemes

## The Schemes

Various schemes are being introduced based around business rates. These include:

- **a business rates holiday for retail, hospitality and leisure businesses in England for the 2020 to 2021 tax year**
- **a business rates holiday for nurseries in England for the 2020 to 2021 tax year**
- **the Retail and Hospitality Grant Scheme, which provides per-property cash grants to qualifying businesses of:**
  - **£10,000 where the rateable value of the property is up to £15,000; and**
  - **£25,000 where the rateable value of the property is more than £15,000 and less than £51,000 and**
- **the Small Business Grant Scheme, which will provide a one-off grant of £10,000 to support small businesses that already pay little or no business rates because of small business rate relief or rural rate relief.**

## Applications

There is no need to apply for these schemes. Instead, local authorities will write to eligible ratepayers. Because of this, we have not set out the qualification criteria for the schemes in detail.

# Protection from eviction for commercial tenants

Our property team have written a separate blog on this protection, which can be found here.

It is important to note that this protection does not mean that rent is not payable, merely that a commercial tenant which cannot pay its rent because of COVID-19 will be protected from eviction. Failure to pay may result in breaches of banking covenants or damage to credit ratings, for example. Landlords may also claim under personal or other guarantees, or against rent deposits or use other methods of recovery such as court proceedings or statutory demands.

# Sick Pay Support

## The Scheme

The government has indicated that it wants to bring forward legislation to allow small-and medium-sized businesses and employers to reclaim Statutory Sick Pay ("SSP") relating to paid for sickness absence due to COVID-19.

The scheme will cover up to 2 weeks' SSP per eligible employee who has been off work because of COVID-19. It should be noted that this does not apply to SSP arising from other illnesses.

Employers are required to maintain records of staff absences and SSP payments, but don't need to provide a GP fit note. Instead, evidence should be obtained by the employees obtaining an isolation note from NHS 111 online or if they live with someone with symptoms from the NHS website.

The eligible period for the scheme will commence the day after the regulations on the extension of SSP to those staying at home comes into force.

## Eligibility

Employers are eligible for the scheme if:

- **their business is UK based**
- **it is a small or medium-sized business and employed fewer than 250 employees on 28 February 2020.**

## Applications

The government has not yet finished developing its rebate scheme for this support, but has indicated that details of how to apply will be provided when the relevant legislation has been passed.

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**If you have any questions about any of the issues raised in this blog, or require support in taking advantage of them – for example in selecting employees to furlough or agreeing the documentation for a loan under the Coronavirus Business Interruption Loan Scheme.**

**Please contact John Young of our London Office at john.young@jmw.co.uk or 07849 628 755.**

**For further information on coronavirus issues, please refer to our COVID-19 Hub**

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This note is correct as of 05 April 2020

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