

# Employment FAQs

Correct as at 31 March 2020

## A lot of the SGB posts are funded by [sportscotland grant funding](#) - can SGBs access job retention fund?

The answer is it is technically possible for all jobs but it should not be accessed for grant funded posts and therefore, this will all depend on the nature of the different posts.

Government, and we understand [sportscotland](#), are of the view that where employers receive public funding for staff costs, and that funding is continuing, employers must use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. The grant funding continuing means that there is no prospect of an SGB correctly declaring to HMRC that those roles were at risk of redundancy. That's important to consider and not lose sight of. The scheme is purely to help employers avoid redundancies. The scheme is designed to support employers who do not have the money coming in to pay employees, thus if funding has been received then the expectation would be that the money is used to pay funded employees.

If a role is not funded then there is an option to place that individual on furlough leave, but you must consider and apply the HM Government guidance on furlough, recognising that employees would have to be de facto redundant before you can use the scheme.

## If there are no restrictions on [sportscotland funding](#) would this allow us to furlough appropriate staff?

See answer above. There are significant restrictions.

## Do you have any advice on mitigating against unrest with staff being paid 100% to furlough versus keeping staff on books to work at the same rate of pay (100%)

An open and transparent conversation with staff is important so they understand the difficult decisions that are being made at this time. The reality of the situation is you have

little control or input over the scheme rules and are bound to follow the rules of it whilst ensuring the financial viability of your organisation. If this creates differences between staff then this is an unfortunate by-product of a situation outwith your control. You should explain to staff the scheme rules and why this means they are placed in one category over another; if all else fails explain that the only alternative was to make people redundant – which surely no-one would wish.

## What is the position if a member of staff on maternity leave asks to return to work early with position that may be furloughed?

Furloughing doesn't affect normal employment law considerations. At first glance, it is tempting to say that an employee would have the right to request an early return from maternity leave subject to normal notification requirements of an early return from maternity leave; if their role was furloughed then they could be furloughed upon their return from maternity leave. We think this is wrong however.

We do not know how HMRC will administer this or what steps they will take to assess cases. However, it is reasonable to consider that if HMRC identified that someone had ended maternity leave early to access furlough, they could decline to pay out. We think that this is possible because in HM Government guidance, it says that (a) people on unpaid leave cannot access furlough; and (b) if someone is on maternity leave, then they are entitled to up to 39 weeks maternity pay.

So, if a person has intimated already when they plan to return to work, they should be held to that or the risk is you will not be able to furlough them; if they try to change their plans purely to furlough, then you should discourage this; if however, they return from maternity leave in the normal way, they are entitled to then be treated the same as anyone else and can be furloughed if you wish (and bearing in mind

our view on grant funded posts).

**If government fund 80% of furlough is there any scope to maximize 20% of staff time if funded?**

No the government has been clear that if staff are furloughed they must not perform any work for their employer unless they are completing training or volunteering provided those activities do not provide services or generate revenue for your organisation.

**How does HMRC guidance for job retention fund relate to sportscotland funded positions**

Please see answers given above in relation to funded positions. Do not furlough staff who are **sportscotland** funded roles.

**Annual leave during furlough - Can you enforce leave during this period to avoid significant leave when we return?**

No.

However, there is going to be a change to the working time regulations allowing employers to push holidays from this year to next, and then on again if necessary, to help the country recover from this emergency. This will apply to up to 4 weeks of the employees annual leave.

**Could we furlough 1 member of a team for 3 weeks, bring them back and furlough the other member for 3 weeks etc.**

There is no guidance on this point and although this appears tempting, we believe it would be a mistake to do so. We do not think that the guidance supports this because it would be inconsistent with what an employer would do if contemplating making redundancies. If you are going to furlough someone, you should avoid this because it would risk the grant you are seeking.