

# COVID – 19: JOB RETENTION (FURLOUGH) SCHEME

## Guidance Notes for Employers

### 1 Background

As a consequence of Covid-19 (caused by the coronavirus SARS-CoV-2) (the **Virus**) and the adverse impact it has had on general economic activity and business revenues, certain employers in the Falkland Islands may be unable to maintain their current workforce or their employees' wages, salaries and other employment benefits, either in full or at all. In order to assist those employers to continue to trade and to avoid the employees concerned being made redundant, the Falkland Islands Government (**FIG**) is offering to pay, for the period until 30<sup>th</sup> September 2021, 80% of the wages, salaries and other economic benefits of those employees who are unable to work (either at their normal workplace or at home) in consequence of the Virus (and a rateable proportion of that amount for those employees who are only able to work reduced hours). This might include employees who are required, on account of the Virus, to self-isolate or to quarantine after returning from overseas. Payments are subject to a cap of £2,500 per month per employee but shall not be less than the rate of the minimum wage, if applicable. Such support is being made available under the Job Retention (Furlough) Scheme (the **Scheme**) and is subject to the terms set out in paragraph 2 below.

FIG may announce further measures to extend (or reduce) the scope of, or otherwise amend the terms of, the Scheme in the future.

Parties without employees are not entitled to claim under this Scheme but may be entitled to claim under the **Income Supplement Scheme** (subject to its terms), details of which are available at [www.fig.gov.fk/covid-19](http://www.fig.gov.fk/covid-19).

Employees who are made redundant, or who have job offers withdrawn, on account of the Virus may be entitled to claim under the **Unemployment Subsidy Scheme** (subject to its terms), details of which are also available at [www.fig.gov.fk/covid-19](http://www.fig.gov.fk/covid-19).

### 2 Support for Employers under the Scheme

Under the Scheme, FIG will provide Scheme Payments (as defined in paragraph 2.6(h)) upon and subject to the following terms (the **Terms**):-

2.1 **Scope of Scheme:** The Scheme applies to each employee (**Employee**) whose employer (**Employer**) is unable, on account of the adverse economic effects of the Virus, to provide them with any work of the type they ordinarily undertake (for example, because that work has declined in volume or because the employee has been required, on account of the Virus, to self-isolate or to quarantine after returning from medical treatment or essential training overseas and is not available for work as a consequence). In those circumstances, the employer may request them, and they may agree, to take a temporary leave of absence from their employment for the Furlough Period (as defined in paragraph 2.6(d) below). During that Furlough Period, the Employee is said to be on **furlough** for the purposes of this Scheme. Alternatively, the Employer may only be able to provide them with part of their usual work and so requests them, and they agree, to undertake short-time working during that Furlough Period; such an Employee is said to be on **short-time working** for the purposes of the Scheme. If an Employee is able to carry out all of their work at home during any proposed Furlough Period, or the remaining part of their work at home in any proposed period of short-time working, the Employer is unable to make a claim in respect of them under this Scheme (as provided in paragraph 2.9(b) below).

2.2 **Scheme Payments for Employers:** With respect to each Employee on furlough or short-time working for one or more Furlough Periods (in accordance with paragraph 2.4), FIG will pay their Employer the following for the duration of the Furlough Period (subject to the minimum and maximum amounts stated in paragraph 2.3):-

- (a) a sum equivalent to 80% of the Employee's Employment Costs (as defined in paragraph 2.6(b) below) where the Employee is unable, on account of the adverse economic effects of the Virus, to work any

of their usual working hours (whether at their normal workplace or at home) and so is placed on furlough during the Furlough Period; or

- (b) a proportion of the sum referred to in paragraph 2.2(a) above where the Employee is only able to work for part of their usual working hours (either at their normal workplace or at home) during the Furlough Period on account of the adverse economic effects of the Virus and so is put on short-time working (such proportion to be in line with the percentage of their usual working hours which such Employee is able to work during the Furlough Period).

2.3 **Minimum/Maximum Scheme Payments:** The Scheme Payments provided by FIG (whether under paragraph 2.2(a) or (b)) shall not, in any circumstances during the Furlough Period:-

- (a) be less than the amount of the Minimum Wage in respect of any Employee who is entitled to the same under the Minimum Wage Ordinance 2013 and any subsidiary legislation made under that Ordinance; and
- (b) (subject to paragraph 2.3(a)), exceed the sum of £2,500 per month per Employee.

2.4 **Furlough Periods:** Support under the Scheme is available for the duration of the Scheme Term. Within that term, an Employer may claim Scheme Payments for one or more Furlough Periods as they choose in respect of such Employees as they think fit (subject to these Terms), provided that any such Furlough Period shall not be less than seven days in length and shall expire on or before the date of expiry of the Scheme Term.

2.5 **Commencement and Duration of Scheme**

- (a) The Scheme shall be deemed to take effect on and from the Commencement Date and shall, subject to paragraphs 2.5(b) and 2.10(b), continue in effect for the duration of the Scheme Term (and for such further period as shall be necessary to process and make Scheme Payments claimed during the Scheme Term).
- (b) Without limit to FIG's power to amend or terminate the Scheme in accordance with paragraph 2.10(b), the Scheme will be subject to review on or around 31<sup>st</sup> July 2021.

2.6 **Definitions:** For the purposes of the Scheme:-

- (a) **Commencement Date** means 24<sup>th</sup> April 2020;
- (b) **Employment Costs** means the aggregate costs of an Employee's gross salary, wages and any other employment benefits payable to them under their employment contract or other terms of employment (as required under the Employment Protection Ordinance 1989) at the rates in force as at the Commencement Date; shall comprise regular, contractual gross earnings and other benefits such as compulsory commission, benefits in kind and regular overtime but shall exclude discretionary commission (including tips), payments or bonuses or non-cash payments; and shall be assessed in accordance with paragraph 2.7(b);
- (c) **furlough** shall be as defined in paragraph 2.1; and **furloughed** shall be construed accordingly;
- (d) **Furlough Period** means a period during which an Employee is furloughed, or is placed on short-time working, for the purposes of this Scheme, such period to be not less than seven days in length and to expire on or before the date of expiry of the Scheme Term;
- (e) **KEMH** means the King Edward VII Memorial Hospital and/or the Department of Health and Social Services, as appropriate;
- (f) **Minimum Wage** means, in the case of an Employee who is, or is to be treated as, a worker within section 5 of the Minimum Wage Ordinance 2013 and is carrying out eligible work within section 6 of that Ordinance, the minimum wage for the eligible work carried out for the relevant Employer during each pay reference period (within section 7 of that Ordinance) in which the Employee does such eligible work at the rate to which the Employee is entitled for such pay reference period under section 8 of, and subject as provided in, that Ordinance and any subsidiary legislation made under it from time to time.

- (g) **Non-essential worker** means any person whose employment or business does not fall within the category of essential work as specified by FIG from time to time;
- (h) **Scheme Payment** means the payment of 80% of an Employee's Employment Costs as referred to in paragraph 2.2(a) or (as the case may be) a pro rata proportion of such amount as referred to in paragraph 2.2(b), subject in each case to the minimum and maximum amounts stated in paragraph 2.3;
- (i) **Scheme Term** means the period commencing on and from the Commencement Date and expiring on 30<sup>th</sup> September 2021, during which Scheme Payments may be claimed (subject to paragraphs 2.5 and 2.10(b));
- (j) **Self-employed** includes those who are sole traders, partners in a partnership (but not the employees or salaried partners of such partnerships, or the members or employees of limited liability partnerships), casual workers or workers on zero-hours contracts, and the sole or principal proprietors of companies;
- (k) **short-time working** shall be as defined in paragraph 2.1; and
- (l) **Sole carer** means a person who has sole or principal responsibility for the care of a child under the age of 16 years and who does not receive regular support in discharging this responsibility from their spouse, other family members or other parties, or who shares responsibility for the care of such a child with one or more persons, each of whom is incapacitated or otherwise unable to provide support during the period of that child's self-isolation.

## 2.7 **Scheme Payments**

- (a) Scheme Payments will only be provided in respect of Employees who, on account of the adverse economic effects of the Virus, are unable to work at all during the Furlough Period (for example, because that work has declined in volume or because the employee has been required, on account of the Virus, to self-isolate or to quarantine after returning from overseas and is not available for work as a consequence) and so are placed on furlough; or who (due to the Virus) are able to work only part of their usual hours and so are placed on short-time working. If an Employee is able to carry out their work at home during any proposed Furlough Period, or the remaining part of their work at home in any proposed period of short-time working, the Employer is unable to make a claim in respect of them under this Scheme (as provided in paragraph 2.9(b) below). With respect to Employees placed on short-time working, an Employer may be entitled to such part of the Scheme Payment as the Scheme Administrator shall determine in their discretion. Scheme Payments are provided with respect to the Employment Costs of those Employees during that Furlough Period. In the event that an Employee is provided by the Employer (or an associated organisation, as determined by the Scheme Administrator) with work of the type they ordinarily undertake at sufficient levels to enable them to work for all their usual working hours (whether at their normal workplace or at home), the Employer shall not be entitled to make a claim under the Scheme with respect to that Employee and shall be expected to comply in full with the Employer's obligations under its employment contract or other terms of employment with the Employee, including its obligation to pay the Employment Costs of such Employee in full.
- (b) Scheme Payments in respect of each Employee shall not, in any circumstances, exceed the maximum and minimum amounts set out in paragraph 2.3 during the Furlough Period. Subject to those limits, the amount of such Scheme Payments due to an Employer in respect of an individual Employee will be determined at the discretion of the Scheme Administrator by reference to the Employment Costs of the Employee concerned at the rates in force as at the Commencement Date, whether the Employee concerned needs to be furloughed or placed on short-time working for the Furlough Period on account of the adverse economic effects of the Virus, and the proportion of their usual working hours that that Employee is able to work during the Furlough Period (whether at their normal workplace or at home). In assessing the Employment Costs of each Employee, the Scheme Administrator will have regard to the Employee's regular gross monthly wages, salary and other employment benefits as applicable (subject to the maximum and minimum amounts set out in paragraph 2.3) provided that if the rate of these varies and the Employee has been employed for at

least one year, the Employer may claim for the amount earned by the Employee in the same month of the previous year or the average of their gross monthly earnings for the previous year (whichever is higher). If the Employee has been employed for less than a year (subject to paragraph 2.9(c)), the Employer may claim for an average of the Employee's gross monthly earnings since they started work.

- (c) An Employer is entitled (but not obliged under the Scheme but without limitation to its contractual or other obligations to the Employee) to pay the Employee more than the amount of the Scheme Payments it receives but shall not, in any circumstances, pay the Employee less than the amount of the Scheme Payments.
- (d) A Furlough Period shall not be less than seven days in length, and shall expire on or before the date of expiry of the Scheme Term.
- (e) An Employer can make a claim in respect of an Employee who also works for one or more other employers (including FIG), even if one or more claims is made (or to be made) under the Scheme in respect of that Employee by such other employers. However, the total Scheme Payments provided to all or any employers in respect of that Employee shall not exceed the sum of £2,500 per month during the Furlough Period, subject as referred to in paragraph 2.3. If an Employee has had multiple employers during the twelve months preceding the Commencement Date, has only worked for one of them at any one time, and is being furloughed or placed on short-time working by their current Employer, their former/other employer(s) should not re-employ them, put them on furlough or short-time working and make a claim in respect of them under the Scheme. An employee can be placed on furlough or short-time working by one Employer but continue to work for another (subject to any contractual restrictions to the contrary).
- (f) A claim may not be made under the Scheme in respect of an Employee who is (or in substance is) the same person as the Employer (for example, without limitation, where the Employer is the sole proprietor of a company and is employed by that company). However, a claim may be made in respect of such person under the Income Supplement Scheme (subject to its terms), details of which are available at [www.fig.gov.fk/covid-19](http://www.fig.gov.fk/covid-19).
- (g) If an Employee is not available to work for their Employer due to the fact that they are:-
  - (i) required by KEMH or FIG to self-isolate on account of the Virus because they are non-essential workers, they have symptoms associated with the Virus, or a member of their household has such symptoms and has been required to self-isolate;
  - (ii) a sole carer of one or more children required by KEMH or FIG to self-isolate on account of the Virus; or
  - (iii) required by KEMH or FIG to quarantine on account of the Virus after returning to the Falkland Islands from medical treatment or essential training overseas, and is unable in each case to work from home during the period of self-isolation or quarantine, their Employer may claim support in respect of such Employees under this Scheme (subject to its Terms).
- (h) Scheme Payments under the Scheme will be made in monthly instalments, or at such other intervals as the Scheme Administrator may determine; and by means of FIG's Account Payable System (or such other method as the Scheme Administrator may specify). Applicants who are not already registered on this System will need to complete and submit to FIG a Scheme New Creditor Form. To be eligible, applicants will also need to maintain a current bank account with Standard Chartered Bank in Stanley.

## 2.8 **Employers**

- (a) Subject to paragraph 2.8(b), this Scheme can be used by any type of employer, including individuals, partnerships, unincorporated associations, corporate bodies and charities.
- (b) The following employers shall not be entitled to make claims in respect of their employees under the Scheme:-
  - (i) statutory corporations and other bodies which are in receipt of regular and substantial subventions from FIG (such that the subvention forms part of FIG's budget process and the recipient body is named in FIG's approved estimates);

- (ii) the Museum and National Trust (as established pursuant to the Museum and National Trust Ordinance 1991);
  - (iii) governments or public authorities of countries or territories other than the Falkland Islands;
  - (iv) employers whose activities are wholly or substantially conducted outside the Falkland Islands; and
  - (v) employers engaged by the Ministry of Defence (**MoD**) and their sub-contractors (including, without limitation, those named in the Taxes and Duties (Defence Contractors' Employees Exemption) Order 2019), in each case to the extent engaged in MoD-related work and to the extent that such employers, sub-contractors or their employees are receiving Virus-related support from the MoD or other UK government departments or offices in terms substantially similar (as determined by the Scheme Administrator) to the support available under the Scheme, provided that such employers or their sub-contractors shall be entitled to apply under the Scheme in respect of any Employees who qualify under this Scheme but are not eligible for any such support from the MoD or other UK government departments or offices.
- (c) In order to be eligible under the Scheme and in consideration of, and as pre-conditions to, the receipt of Scheme Payments under the Scheme, each Employer undertakes in favour of FIG:-
- (i) that, in selecting the Employee for the purposes of the Scheme, the Employer has not acted in a discriminatory manner and has made its decision solely on the basis of commercial considerations and business need;
  - (ii) that it has obtained the Employee's written agreement, for the duration of the Furlough Period, to be furloughed or placed on short-time working under the Scheme, to remain on the Employer's payroll and to receive not less than 80% of their Employment Costs (or other proportion claimed by the Employer) (subject in each case to the minimum and maximum amounts stated in paragraph 2.3) at the rates in force and payable as at the Commencement Date;
  - (iii) for the duration of the Furlough Period, to retain the Employee on its payroll, and not to make the Employee redundant or otherwise terminate their employment; and to pay the Employee not less than 80% of their Employment Costs (or other proportion claimed by the Employer) (subject in each case to the minimum and maximum amounts stated in paragraph 2.3) at the rates in force and payable as at the Commencement Date; and
  - (iv) except as provided in paragraph (iii) above, not otherwise to amend the Employee's employment contract or terms of employment by reason of any Furlough Period or other cause related to the operation of the Scheme or the Virus.
- (d) Each Employer represents and warrants that it has not amended the Employee's employment contract or terms of employment within the thirty days immediately preceding the Commencement Date, or otherwise by reason of the operation of the Scheme or the Virus.
- (e) An Employer may claim for one or more Furlough Periods within the Scheme Term, whether for the same Employee(s) or different Employees. The Employer may claim more than one Furlough Period in any one application in respect of the same Employee. If the Employer claims for one Furlough Period in an application but then wishes to claim for one or more further Furlough Periods in respect of the same Employee, they will need to submit a fresh application (although they will not require to submit a further copy of such Employee's Employment Contract or other terms of employment, or a further declaration by such Employee in the form set out in Annex 2 pursuant to paragraphs 2.9(h) and 3.3, if such contract, terms or declaration were provided with the first application and have not changed in the interim).
- (f) In making an application for Scheme Payments, each Employer represents and warrants that all information contained in its application and in any documents accompanying the application(s) or otherwise provided in connection with the Scheme is, to the best of its knowledge and belief (having made all reasonable enquiries), true, accurate, up-to-date and complete.

- (g) Payments made to an Employer under the Scheme will be taxable income in the hands of the Employer and will be subject to income or other tax in accordance with the terms of the Taxes Ordinance (as amended) and any other relevant tax legislation, depending on the Employer's individual circumstances.

## 2.9 **Employees**

- (a) This Scheme applies to any Employee who is otherwise eligible under the Terms, including (without limitation) apprentices, those on full-time or part-time contracts, agency workers, those on fixed-term contracts (provided that those contracts remain in force throughout the Furlough Period without being renewed), salaried partners, salaried members of limited liability partnerships and salaried company directors. The Scheme does not apply to those who are self-employed rather than employed (which includes those on zero-hours contracts or casual contracts (as determined by the Scheme Administrator); no claims may be made in respect of them under this Scheme but they may be entitled to claim under the Income Supplement Scheme (subject to its terms), details of which are available at [www.fig.gov.fk/covid-19](http://www.fig.gov.fk/covid-19)).
- (b) In the event that an Employee is capable (physically and by reason of the availability of suitable equipment and other resources) of working and discharging all of their duties as employee at home during any proposed Furlough Period, or is capable of carrying out the remaining part of their work at home during any proposed period of short-time working, their Employer shall not be entitled to make a claim in respect of them under the Scheme.
- (c) Unless the Scheme Administrator otherwise agrees on a case-by-case basis, any Employee must have been employed by the relevant Employer for not less than thirty days prior to the commencement of their (first) Furlough Period; and must have been on the Employer's payroll on the Commencement Date. Employees that were employed on the Commencement Date but since that date have been made redundant or have gone on unpaid leave can still qualify for Scheme Payments if the Employer re-employs them and puts them on furlough pursuant to the Scheme. Claims under this Scheme can be made for Employees who are off-sick, on maternity or paternity leave or on holiday on the Commencement Date (subject to their otherwise being eligible under these Terms).
- (d) An Employee must be employed to work for at least seven hours per week for the Employer making a claim in respect of that Employee under the Scheme.
- (e) Each Employee must have the right to live and work in the Falkland Islands, hold a current, valid entitlement, permit or consent for such purpose, and be resident in the Falkland Islands throughout their Furlough Period.
- (f) In consideration of Scheme Payments being made to their Employer and their receipt of corresponding payments from, and their continued employment by, their Employer, each Employee shall, for the duration of the Furlough Period, waive their rights to their Employment Costs under their employment contract or other terms of employment, and to any guarantee payments under sections 15 – 21 of, and their other statutory rights (including, without limitation, redundancy rights) under, the Employment Protection Ordinance 1989 to the extent that such rights would otherwise arise by reason of their furlough or short-time working provided that the Employee's statutory rights (including redundancy rights) in the event that the Employer makes the Employee redundant during or after the Furlough Period shall not be affected and shall apply in full, and that the Employee shall not be deemed to have (or purported to have) waived their rights to a Minimum Wage under the Minimum Wage Ordinance 2013 and any subsidiary legislation made under it from time to time.
- (g) Payments made by Employers to Employees which are funded under the Scheme will be in the nature of remuneration, will be taxable income in the hands of the Employee and will be subject to tax and other deductions (for example, in relation to pension contributions) in the normal way, depending on the Employee's individual circumstances.
- (h) Subject to paragraph 2.8(e), Employers shall provide with each application a declaration (in the form set out in Annex 2) completed and signed by each Employee (in original or electronic format as appropriate), together with a copy of their employment contract or terms of employment.

## 2.10 **FIG and Scheme Administration**

- (a) The Scheme is administered by the Financial Secretary with the support of the Head of Finance (together the **Scheme Administrator**).
- (b) FIG may, at its discretion, extend (or reduce) the length of the Scheme Term, change the categories of Employers or Employees subject to the Scheme, amend the Terms, or otherwise make changes to, or terminate, the Scheme at any time. In the event that FIG extends (or reduces) the length of the Scheme Term, the Scheme Administrator shall be entitled to reduce or extend the Furlough Period accordingly or provide support on a pro-rata basis in respect of such reduced Furlough Period. Any such changes shall be communicated (on not less than seven days' notice) to individual Employers or Employees or by means of public notice in the Gazette or on FIG's website.
- (c) FIG shall be entitled to audit the Employer's compliance with the Terms on giving not less than three working days' prior written notice to the Employer; and the Employer shall provide FIG with access to such information, premises, employees and agents as FIG may reasonably request.
- (d) FIG shall be entitled to verify an Employee's income and other employment benefits by reference to their tax and other records as maintained at the FIG Tax Office or other departments within FIG.
- (e) FIG shall be entitled to verify that an Employee has been required to self-isolate or quarantine for the purposes of paragraph 2.7(g) by reference to their medical or other records as maintained at KEMH or other departments within FIG.
- (f) In the event that the Employer is in breach of the requirements of the Scheme or any of its undertakings, or provides information for the purposes of the Scheme which is false, misleading or otherwise in breach of paragraph 2.8(f) above, FIG shall be entitled to the repayment of any Scheme Payments made (in whole or part) and to recover that amount as a civil debt. In the event that Employers receive Scheme Payments of amounts in excess of those to which they are entitled under the Scheme, FIG reserves the right to recover any over-payment from the relevant Employer (or Employers, if more than one, in such proportions as the Scheme Administrator shall consider appropriate in the circumstances). Any fraudulent activity in connection with the Scheme may be subject to criminal proceedings.

## 3. **Applications under the Scheme**

- 3.1 In order to obtain Scheme Payments, the Employer needs to complete the application form set out in **Annex 1** of the Excel file 'Job Retention (Furlough) Scheme - Application Form and Guidance Notes' available at [www.fig.gov.fk/covid-19](http://www.fig.gov.fk/covid-19). The information provided in this form, in any documents enclosed with the Employer's application(s) or otherwise provided in connection with the Scheme will form part of the agreement the Employer enters into with FIG in relation to the Scheme. As these documents will be legally binding on them if successful, Employers are advised to obtain their own independent legal advice on their content, effect and implications.
- 3.2 In submitting an application and/or accepting any Scheme Payments under the Scheme, the Employer will be deemed to accept, and agree to be bound by, the Terms and by its declaration contained in its application(s).
- 3.3 In order to receive Scheme Payments (but subject as provided in paragraph 2.8(e)), Employers will be required to obtain and provide a declaration by each Employee in the form set out in **Annex 2** (in original or electronic format as appropriate) with each application.
- 3.4 If an applicant has any questions or needs any assistance in completing the application form, they should e-mail [treasury.support@sec.gov.fk](mailto:treasury.support@sec.gov.fk) or phone 28400.

## 4. **The Application Process**

- 4.1 To apply for Scheme Payments, please send a completed "*Job Retention (Furlough) Scheme: Application Form for Employers*" to the Scheme Administrator by e-mail ([treasury.support@sec.gov.fk](mailto:treasury.support@sec.gov.fk), as above) or by post to the Treasury, Secretariat, Stanley, Falkland Islands, FIQQ 1ZZ.
- 4.2 The application should be supported by copies of the documents listed in the application form (or those relevant).

- 4.3 Applications may be submitted at any time during the Scheme Term, or until FIG gives notice that no further funds are available under the Scheme. Each application must have been submitted before the end of the Scheme Term or by the date specified in that notice.
- 4.4 Applicants must notify the Scheme Administrator of any change in the information contained in their applications.
- 4.5 Applications will be assessed by the Scheme Administrator who shall be entitled to require such further information or clarification from an applicant as they think fit. The Scheme Administrator will endeavour to decide an application and communicate that decision as soon as reasonably practicable (and in any event within twenty-one days) after receipt of an application.