

## **Coronavirus (Covid-19) – Impact on Terms and Conditions of Employment for Scottish Government Sector**

### **Version – 29 March 2021**

#### Introduction

1. It is recognised that the current coronavirus outbreak continues to have a significant impact on the work of public bodies across the Scottish sector and on individual members of staff. This paper is intended to set out how specific terms of employment will exceptionally be impacted during the period of the outbreak. It does not create a precedent either for permanent changes to terms and conditions, arrangements that apply to agency and self-employed contractor staff, nor for more general alignment across bodies. These arrangements have been developed on a without prejudice basis.
2. The underlying principle is that staff will not face any detriment as a result of following Government guidance on dealing with COVID-19 nor any discouragement from following Government guidance fully.
3. Staff are expected to follow advice from [NHS Inform](#) or [Health Protection Scotland](#) in relation to monitoring for symptoms of Coronavirus, reporting of suspected cases and self-isolation.
4. Even where the protection level system allows greater movement and travel for a range of purposes, the Government guidance continues to be that staff work from home wherever possible. Under new Stay at Home guidance which took effect from 5 January 2021, a legal requirement was introduced to stay at home except for essential purposes. Employers are asked to review their operations to make sure that every single function that can be done by people working at home, is being done in that way.

#### Sickness Absence

5. Staff who are sick or unfit for work with symptoms of the virus should remain at home, rather than come into the workplace. They should follow the guidance from [NHS Inform](#) or [Health Protection Scotland](#).
6. All sickness absences should be recorded on HR systems using the appropriate categories.
7. Due to the pressures likely to be faced by GP practices and the need to follow advice on self-isolation, for this period only, a 'Fit Note' will not be required for the first 10 days of absence.
8. Members of staff should keep their line manager updated regarding their absence, of their progress in getting a test, the result of the test and subsequent plans to return to work.
9. Coronavirus absences will be excluded from any calculation of contractual sick pay and absence management triggers. In effect, this means that staff will not tip into the half and nil-pay categories specifically as a result of coronavirus-related sickness absence. If an absence becomes long-term and is categorised on a fit note as post-

covid syndrome ('long covid'), the absence from that point in time will be managed in the same way as other long-term absences (i.e. contractual sick pay and absence management triggers will apply with effect from the date of the fit note) to ensure parity with those staff absent with similar health conditions (e.g. ME).

10. Where a member of staff is absent as a result of absences which are shown to be related to the current medical emergency (e.g. as a result of ongoing medical conditions such as depression or anxiety which have been adversely impacted by the current emergency and the provisions to deal with it) bodies should use their existing discretions to determine whether it is appropriate to extend sick pay taking account of all the circumstances. Where discretion is applied, the absence arrangements will be kept under regular review and will take into account medical/occupational health advice on how Covid has impacted the absence. Organisations should carefully consider individual circumstances and the requirements to make reasonable adjustments under the Equality Act 2010 when making such decisions.

#### Homeworking and Special Leave options

11. Where the member of staff is fit for work but is impacted by the coronavirus, homeworking will be the default position. Homeworking will be considered in its broadest terms to enable those who could not normally work from home to do so e.g. tasks/work that can be carried out offline. Only staff whose work means it is absolutely necessary to attend a workplace should be expected to attend the workplace. Where this is not the case, and it is not possible for them to work from home, special leave will be applied. Staff will have this recorded as special leave and will continue to be paid as normal. Each case should be treated sensitively and on its merits.
12. Where staff who are unable to attend work due to caring responsibilities arising from:
  - school/nursery closures,
  - a child self-isolating due to having had close contact with someone who has tested positive for coronavirus, or
  - caring for family members who have been diagnosed with coronavirus,attempts will be made to allow them to work from home where this is possible. In identifying potential work, as broad a view as possible will be taken of the type of work which may be able to be undertaken. Any work allocated should also take account of the specific circumstances (e.g. where a member of staff is caring for young children, it may not be possible for them to undertake work to any significant extent). Staff in this situation who are only able to work part of their scheduled hours will nevertheless be credited with their normal daily hours.
13. During lockdown arrangements where nurseries, schools and care facilities are closed, staff with caring responsibilities should be supported to manage home schooling/caring for family members and offered flexibility, following discussion with their manager, to meet both their individual circumstances and critical work requirements. This would include being credited with their normal daily hours where they have been unable to work their scheduled hours, which could take the form of special leave. Staff (whether full or part-time) are not expected to make up hours on their non-working days unless they have specifically agreed to do so as part of a

flexible working agreement reached with their line manager to support balancing caring and work responsibilities.

14. Where it is not possible for a member of staff to work from home and they are not undertaking necessary work which requires them to be in a workplace, then paid special leave will apply.
15. In all cases managers should keep in touch with their staff and staff should take all practicable steps to resume duty as soon as possible - taking account of advice and guidance from government sources.
16. Staff should remain aware of their obligations under the Civil Service Code or other relevant code of conduct.

Staff With Underlying Health Conditions and other Vulnerable Adults.

17. From 1 August, the Scottish Government relaxed some of the restrictions previously placed on staff who had been shielding including the potential for staff who are in a Level 0, 1, 2 or 3 area in some circumstances to return to work.
18. For those in a Level 4 area and in particular under the current lockdown, staff who have received a shielding notification from the Chief Medical Officer can continue to work from home if they can. Staff who cannot work from home, who live or work in an area in lockdown, should not go to work. The shielding notification acts as a fit note for as long as lockdown restrictions are in place.
19. Some colleagues with underlying health problems or who are pregnant may have specific concerns about coronavirus. Managers should consider what action might reasonably be taken to allow these staff to work from home wherever possible, including temporarily amending duties. Where homeworking is not possible, staff who are pregnant who work in a public-facing role should only carry on working if a risk assessment supports this and should work from home where possible in their third trimester. Currently the agreed principles on recovery state that staff who are vulnerable should not be required to return to work. This includes staff who have been shielding, staff with underlying medical conditions, staff who are pregnant and others at additional risk such as BAME staff.
20. **When considering recovery plans employers must ensure that protecting the health, safety and wellbeing of staff is the primary consideration in every case.**
21. To that end the following principles should be applied when considering which staff are asked to return to work.
  - a) Homeworking wherever possible remains the default position at this time.
  - b) Where homeworking is not feasible Scottish Government guidance remains that while certain workers can return as defined in phase 3 of the route map, workers who have been [shielding in line with NHS Inform guidance](#) should not be expected to return unless all appropriate measures to mitigate risks have been put in place. These staff should continue to be placed on paid special leave where the role cannot be adapted to homeworking or alternative duties / job role be found which can be done from home.

- c) Where it has been agreed in recovery planning consultation with trade unions which functions and numbers of staff are required to return to the workplace, decisions on who should be asked to do so must take account of the individual circumstances and risk assessment for each employee.
- d) As well as the standard Covid risk assessment, specific risks applying to individuals must be considered. These will include physical, mental health and welfare concerns. Guidance and an individual risk assessment tool can be found on the Scottish Government website here <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-individual-risk-assessment-for-the-workplace/>. Employers should utilise this guidance when conducting their risk assessments.
- e) Employers should seek specific professional advice for those in the very high risk group as identified by the Covid risk assessment, or if there is a health issue and no agreement can be reached between employee and employer. Such advice is highly likely to require input from a qualified medical practitioner such as a GP and/or Occupational Health provider.
- f) Any cost attached to obtaining such advice must be borne by the employer.
- g) The risk to the health of [high risk](#) posed by COVID 19 is not simply confined to physical aspects. Damage to mental health can follow if vulnerable staff face added stress or anxiety due to concerns about the impacts of COVID. Employers should work sympathetically with individuals to ensure that all appropriate steps are taken to address an individual's concerns prior to them returning to a workplace. In discussing a return to work, employers should consider not only the physical but mental health and wellbeing aspects of any proposed return.
- h) These principles will be followed and remain active until such time as employers have been advised of any amendments agreed with the civil service unions.

#### Business Processes/ Hours / Working Patterns

- 22. For key areas where attendance at a place of work is still required, it may be necessary to consider changing opening hours or moving work. Attempts will be made to allow staff to work remotely to prevent the spread of infection. Where this is not possible, for example in critical customer facing organisations, consideration will be given to using customer self-serve options such as telephone and online services to minimise face to face interaction.
- 23. Where changes to normal hours of work, times of work or locations are being proposed to stagger staff attendance and limit potential exposure to the virus, these will be discussed and agreed with staff. If this includes additional attendance, overtime, on-call or shift working, all appropriate terms and conditions of employment and policies relating to such working arrangements will apply.
- 24. Normal mobility rules will apply.

#### Temporary Agency Workers/Contractors

- 25. Temporary agency workers and self-employed contractors will be treated in the same way as permanent staff during this period in relation to Covid-19. Therefore arrangements relating to paid sick leave or special leave will also apply to them for the duration of their assignment. For self-employed contractors who may have more

scope in determining their working hours, flexibility in delivering work would be expected before utilising special leave.

26. Where it is possible for temporary staff to work from home during periods of self-isolation, this will be facilitated. Where this is not possible, paid special leave will apply. This will also apply in the event of building closures.

#### Keyworkers/ Attending Workplaces

27. The Scottish Government has defined various categories of keyworkers.
28. Only staff whose work means it is absolutely necessary to attend a workplace should be required to attend the workplace at this time. Employers should have processes in place to identify such workers and should engage with their trade unions when determining staff who fall into this category.

#### Testing

29. Testing via self-referral is now available to any individual displaying symptoms. Employers should ensure that they communicate directly with staff who have been identified as keyworkers for testing purposes. Where these keyworkers have difficulty in self-referring for testing, employers should have processes in place to assist with accessing testing in line with Scottish Government advice.

#### Health & Safety

30. The following process for ensuring a robust health and safety response where staff must attend the workplace should be followed:  
If a suspected or confirmed case of Covid-19 in the workplace is reported, such an incident must trigger 1) an immediate closure of the location and 2) a full deep clean of the undertaken as soon as possible and at most within 72 hours of becoming aware. Deep clean includes disinfecting all the key touch points within the business, communal areas and impacted workstations. A full risk assessment should be carried out immediately to identify specific areas which require to be closed off and deep cleaned. This will include the immediate work area, but depending on the nature of the site and contacts the individual may have had, may also include a floor within a multi floor building, or building where the building is single floor, or where multiple floors share rest / toilet facilities.
31. Affected staff and local health and safety reps, and trade unions should be informed of the incident and staff in the immediate vicinity of the suspected case must be relocated to another location within the building or to an alternative reasonable building decided on a case by case basis to enable the agreed cleaning regime to commence.
32. If no alternative reasonable location can be found, staff should be placed on special leave until the workplace can reopen.
33. In line with Scottish Ministers' recommendations, bodies should provide face coverings for those staff required to access buildings.

#### Annual & Flexi Leave

34. Approval of annual or flexi leave will be conditional on the business being able to support the absence at the time. Where staff have already booked annual leave, only in exceptional circumstances will they be asked to cancel this. Staff who had pre-booked leave may wish to cancel due to the current situation. Managers are encouraged to look sympathetically on requests to cancel leave where a planned holiday has been cancelled due to coronavirus restrictions. However it will be essential that staff use annual leave for rest and recuperation, even if they are unable to go away on holiday.
35. If it is necessary to recall a member of staff from leave, claims for expenses of any costs incurred as a result of the recall will be considered if these are not covered by travel insurance.
36. Staff who are sick should use sick leave. However, employees who are not ill but are self-isolating and are working from home are eligible to apply for annual leave if they wish to do so.
37. Staff on special leave or who are furloughed via the CJRS are also eligible to apply to take annual leave and should discuss any request with their manager.
38. It is important to ensure that staff are able to take annual leave to protect their health and wellbeing and managers should ensure that all requests to take annual leave are considered carefully when planning their resourcing requirements.
39. Whilst the Government has put in place measures to allow extension of annual leave carryover, this is for certain employees who are unable to take their annual leave because they are specifically required to work on the COVID-19 response. For the purposes of good health and well-being, staff are encouraged to use leave to ensure they benefit from periods of rest and relaxation and that as far as possible, it is intended that normal employer carryover limits will be applied at the end of the leave year. However, carryover of leave of up to four weeks can be allowed as per the amendments to the Working Time Regulations where staff have been unable to reduce their annual leave balances due to workload, and where managers have considered the situation of the individual and cannot approve leave by the end of the leave year to enable the leave balance to be reduced below the normal employer carryover limit. This change to carryover of leave would apply to both leave year 2021 and 2022 with carry forward balances returning to normal employer carryover limits in 2023.
40. Advice on foreign travel and quarantine can be found in Appendix B.

#### Public and Privilege Holidays

41. The public and privilege holiday dates will remain in place. Where staff are on paid special leave, they will not be reallocated a day in lieu of any public or privilege holiday. Normal arrangements remain in place for staff who are required to work on these dates.

#### Scottish Prison Service

42. While the arrangements in this agreement are intended to apply to all staff it is recognised that there may be specific issues regarding maintaining operational

delivery of the SPS. Alternative arrangements may be put in place subject to the agreement of unions and management in SPS. Unless otherwise agreed, SPS non-operational staff will be subject to the same arrangements as colleagues working for all other organisations covered by this agreement.

#### Fair Work

43. On 25 March the Cabinet Secretary for Economy and the General Secretary of the STUC issued a joint statement (updated on 19 July 2020 and 17 December 2020), outlining the shared commitment to fair work practices in Scotland. The statement calls on employers, trades unions and workers to work together to reach the right decisions on all workplace issues that arise throughout the COVID-19 crisis and ensure workers are treated fairly.
44. The Cabinet Secretary subsequently wrote to public bodies, local government and other employers across Scotland urging them to act in accordance with the Fair Work principles in responding to the Covid-19 outbreak.

#### Recovery Planning

45. A set of high level principles for organisations to consider when contingency planning for a return to work has been agreed with the civil service trade unions and is attached at Appendix A. These should be followed when engaging with local trade union representatives.

#### Time off work for Vaccines

46. As the Covid-19 vaccination programme continues, staff who fall into the priority groups identified by the Joint Committee of Vaccination and Immunisation (JCVI) will receive appointments for their Covid-19 vaccinations. It is recognised that appointments may be given at a fixed time, date and location and so unlike some other medical appointments, there may not be the flexibility to schedule these around business needs. Employers are therefore asked to accommodate appointment times wherever possible. Paid time off during the working day to attend the appointment, inclusive of travel time, should be provided up to the length of the normal working day (e.g. flexi credit, special leave). If an employee was unable to return to work on the day of receiving the vaccine due to any side effects of the vaccine, this would also be paid using flexi credit, special leave or the equivalent, but any absence on the day after the vaccine onwards should be treated as normal absence. Employees who are carers may also need time off work to accompany the person they care for to their appointments and paid time off should be provided on the same terms in those circumstances.

#### Further Developments

47. It is recognised that we face a fluid situation regarding COVID-19 and that additional guidance from Government and changing circumstances may require amendment to this agreement. Any changes will be the subject of consultation and agreement with the trade unions. A joint working group comprising of management and trade union representatives will review the ongoing situation and any requirements for changed or additional guidance for employers and employees.

# Appendix A

## Covid-19 Recovery Phase – Key Principles

- All planning will be in line with official Scottish Government advice on returning to work. As a result, these principles may need to be updated as Government advice changes.
- Trade unions and staff have from the outset been and will continue to be consulted in respect of the process of determining an approach to recovery planning and during its development and implementation
- The policy of working from home for all (except for those staff whose work means it is absolutely necessary to attend a workplace) should continue to work from home until SG policy changes for Scotland as a whole
- For those continuing to work from home, appropriate health, safety and wellbeing advice and equipment for safe homeworking will be provided
- When considering what functions and which staff are to be brought back into buildings, consideration will be given to:
  - Whether functions can continue to be effectively delivered by homeworking
  - Ensuring the health and safety of staff and visitors and the appropriate measures to do so
  - Protection of vulnerable groups, including family members
  - Availability of childcare/schooling/other forms of care required by household members and the impact of these on individual ability to return to a workplace
  - Safe travel options to allow staff to get to work and conduct official business
- Staff in vulnerable groups will not be expected to return to workplaces.
- Risk assessments and equality impact assessments will be carried out prior to any request for staff to return to buildings. These assessments will involve trade union or staff representatives and will be made available to staff as is indicated in the joint statement issued by the Scottish Government, HSE the police and local authorities with the support of the STUC (<https://www.gov.scot/publications/coronavirus-covid-19-safer-work-places-statement/>)
- The risk assessment will take particular consideration of those living in the same household as those identified as vulnerable or those individuals where evidence suggests there is a higher risk eg BAME staff
- Trade unions must be consulted on which functions can only be delivered at the workplace alongside associated numbers of staff

- Building protocols covering aspects such as hygiene and cleaning; wearing of face coverings, physical distancing; space configuration; potential phased working and security will be put in place prior to any building being used
- Usage of buildings will be kept under review to ensure that only staff whose work means it is absolutely necessary to attend a workplace are attending workplaces
- Staff should be fully briefed on all arrangements including health and safety prior to commencing work
- It is recognised that bodies will have different requirements at different times and therefore plans will take into account the specific circumstances of each organisation
- Staff who have concerns will be able to access support from their line manager, HR or their trade union to seek a resolution
- Contingency arrangements for dealing with subsequent infections or staff showing symptoms of COVID should be agreed with trade unions

# Appendix B

## Foreign Travel and Quarantine

### Introduction

This guidance applies to all employees for travel to and from Scotland from 15 February 2021. It will be reviewed in line with FCDO travel advice and government guidance on entering Scotland. Under these restrictions, individuals must not travel to and from Scotland from abroad, unless they have to travel for an essential purpose. It is illegal to travel abroad for holidays and other leisure purposes. Testing and managed isolation in quarantine hotels are in place for those travelling for an essential purpose with limited exceptions. Further information is available at [Coronavirus \(COVID-19\): international travel and managed isolation - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/coronavirus/covid-19/international-travel-and-managed-isolation)

### Travelling for Compassionate Reasons

Whilst travel for compassionate reasons remains one of the essential purposes for travel, requests should be considered sympathetically on a case by case basis and take account of the latest travel advice from the FCDO. Where travel overseas is undertaken for compassionate reasons, staff should work during their managed isolation in a quarantine hotel (or from home in the limited cases where this is permitted) for the 10 day quarantine period. Where they cannot carry out their normal role from this location, you should seek to identify suitable alternative duties and/or training that they can undertake for the quarantine period. Where that is not possible, they should receive special leave with pay for the duration of the quarantine period.

Examples of reasons for considering a compassionate approach might include:

- Attending a close family funeral
- Receiving urgent and serious medical attention
- Accompanying a family member requiring urgent and serious medical attention
- Complying with urgent legal responsibilities overseas
- Supporting a relative overseas who needs urgent and immediate help.

## **Appendix C - Homeworking Principles**

This appendix covers the principles to be followed by employers for those temporarily working at home whilst SG policy for Scotland as a whole is that homeworking wherever possible remains the default position. Employers who wish to put in place a longer term homeworking policy need to do this in discussion with the trade unions once future ways of working are clearer.

### **Employee wellbeing**

- Staff should have access to all employment related policies or staff hand book while working remotely
- Staff should take regular breaks and continue to work their usual contractual hours, in accordance with the Working Time Regulations
- Consideration of wellbeing should form part of regular support and supervision discussions between managers and employees
- Staff and managers should be informed of support mechanisms to promote positive mental health and wellbeing in the workforce, supporting employees who may be anxious for many reasons relating to the changes resulting from COVID-19
- Managers should consider individual circumstances of staff and, where appropriate and possible, consider additional measures to support individual staff members to continue working from home such as offering additional flexible working options such as reduced hours, compressed hours and flexible start and finish times.

### **Health and safety**

- Managers should ensure staff know how to access appropriate Health and Safety advice, such as display screen equipment (DSE) guidance, and who to contact regarding Health and Safety queries and concerns including an emergency point of contact and their trade union Health and Safety Rep
- Employers should have processes in place to enable trade unions to ensure compliance with all aspects of Health and Safety legislation
- Staff should be supported to complete a risk assessment of their home workspace
- Trade unions should be involved in all risk assessment processes
- Managers should consider and action any reasonable adjustments that need to be put in place depending on individual staff members' needs, paying due regard to equalities and protected characteristics

### **Communication and engagement**

- Employers and staff should work together to agree the method and frequency of communication
- Employers should ensure the workforce is using fully accessible communication channels
- Managers should make time for mentoring and staff development, which should be built into and not in addition to ordinary workload
- Managers should take time to discuss career development with their staff on a regular basis
- Trade Unions must be notified of and invited to staff inductions where these are carried out in groups digitally

- Trade Unions should be notified and invited to remote gatherings of groups of staff at all levels, where they would have been invited in person prior to lockdown, and have the opportunity to address all staff

## **Expectations**

- Staff should continue to have a clear understanding of what is expected of them whilst working from home, and that they will be subject to conduct, safeguarding and performance management procedures within the organisation
- Managers should ensure current work priorities and expectations are achievable given the current restraints
- Employers should consider providing support and training for managers to help them successfully manage remote workers

## **Equipment and IT systems**

- Managers should discuss with staff any digital issues they may need to be supported with to work from home, such as broadband connectivity, or any reasonable adjustments they may need
- Staff should be provided with the relevant equipment necessary to carry out their regular duties, such as a laptop, keyboard, laptop stand and an adjustable chair
- Employers should ensure the IT network has capacity to support the number of staff who will be working from home
- Employers should consider ways to protect themselves and employees from cyber-attacks. Such things could include securing accounts, utilising VPN and cyber training

## **Pay, expenses and finances**

- Employers should ensure staff suffer no financial detriment to their pay as a result of homeworking, and pay will remain the same if staff are working the same hours
- Employers should review their policy on expenses incurred from working from home jointly with trade unions and agree any required amendments
- Employers should ensure staff have access to the expenses policy and should reimburse expenditure for business related expenses on an actuals basis for items such as increased house insurance premiums, increased broadband expenses, and telephone calls arising from homeworking.
- The cost of heating and lighting will not normally be reclaimed via expenses. Employers should make staff aware of the tax relief available from HMRC on working from home expenses via a self-assessment return or the [online HMRC portal](#). However where staff experience hardship as a result of costs incurred from working at home, support could include payment of the nominal £6 per week / £26 per month allowance allowed by HMRC for these costs on a case by case and targeted basis. In considering such cases, there should be evidence of an overall change in financial circumstances as a direct result of the pandemic, e.g. loss of income from a partner. There should also be evidence that a reduction in other personal work related costs (i.e. commuting costs) is unable to offset higher costs.
- Staff should check there are no issues with them working from home with their home insurer, mortgage provider or landlord
- Employers should keep a record of the decisions they have made in reference to homeworking and track their impact.

These principles can be used to continually re-evaluate homeworking whilst SG policy for Scotland as a whole is that homeworking wherever possible remains the default position.

## Coronavirus Job Retention Scheme – Principles

Employers should discuss the application of the CJRS with the recognised trade unions. As part of the fair work principles, trade unions have a significant role to play in these discussions. It is advantageous to employers to negotiate a collective agreement (Annex A) where collective bargaining occurs. All employees covered by collective bargaining arrangements will be covered by any collective bargaining agreement on CJRS. Annex A outlines a model collective agreement which public bodies may wish to use.

### 1. Eligibility

1.1 Public sector bodies who are fully funded from public funds are not expected to use the UK Government's [Coronavirus Job Retention Scheme \(CJRS\)](#). Bodies who are not fully funded are able to consider using the CJRS if their staff cannot be deployed to other activities to assist with the coronavirus response.

1.2 Any public body accessing the CJRS will be expected to comply with the Scheme rules in force at that time. Bodies are expected to engage with Scottish Government Finance Pay Policy team prior to accessing the CJRS. The expectation is that bodies will seek to redeploy staff to other areas, including across the wider Scottish Government sector, prior to using the CJRS.

### 2. Principles Applying to Use of the CJRS

2.1 Public bodies accessing the CJRS will be expected to comply with the Scheme rules in place at that time.

2.2 The detail of any proposed Scheme will be negotiated with the relevant trade unions and documented prior to implementation.

2.3 It is expected that the balance between normal contractual pay and the value which can be recovered from the CJRS will be paid by the public body. Tax and National Insurance will continue to be deducted as normal.

2.4 Employers and employees will continue to make normal contractual contributions to any relevant pension scheme and other salary sacrifice scheme payments will continue to be deducted.

2.5 Employees in receipt of maternity pay or sick pay will continue to receive the appropriate rate contractual or statutory of sick/maternity pay rather than being furloughed. Once the period of sickness or maternity ends, these employees may be furloughed.

2.6 Employers will be required to notify employees whom it wishes to furlough in writing. The employee will be required to respond in writing, agreeing to be placed on furlough, unless there is a collective agreement with the recognised unions which delivers consent from all staff in the bargaining unit.

2.7 During any period of furlough, the contract of employment remains in place. Any member of staff who is furloughed cannot do work for the employer during the period of furlough. Where any role related benefit will cease as a result of furlough, the employer will consult with the relevant staff. Furloughed workers should not be compelled to take annual leave whilst designated as furloughed workers, however should they choose to do so, this should be permitted.

2.8 The employer will determine which employees to furlough based on the CJRS eligibility criteria, their obligations under the Equality Act and any other applicable legislation and taking account of any critical business functions which require to be retained e.g. essential security.

2.9 The employer will advise employees in writing in advance when the period of furlough is to end and when they are expected to return to work. A return to work may include to a different role to assist with other critical areas of work. If this is the case, it is expected that discussion will take place with the employee regarding the new role, duration of such role and any impact on terms and conditions prior to them being removed from furlough.

2.10 The return to work plans should be discussed with the trade unions, in accordance with any guiding sectoral principles on returning to workplaces agreed between the Civil Service Trade Unions and the Scottish Government.

2.11 The Public Sector Pay Policy 2021 – 2022 retains the commitment to no compulsory redundancy.

## ANNEX A

### CORONAVIRUS JOB RETENTION SCHEME COLLECTIVE AGREEMENT

#### PARTIES

- (1) **Employer** and
- (2) **The union**

#### INTRODUCTION

The **employer** Coronavirus Job Retention Scheme (the 'Scheme') has been established in the following circumstances:

- A. it relates solely to the unprecedented circumstances occasioned by the Coronavirus pandemic, including measures announced by the UK and Scottish Governments for the containment of the virus and public health generally;
- B. it is intended solely to ensure that **employer** is able to take the necessary operational steps to secure its financial sustainability during, and in the aftermath, of the pandemic, whilst at the same time taking necessary available steps to protect the health and wellbeing of staff, including observance of public health measures announced by the UK and/ or Scottish Governments, and whilst retaining in employment staff who may be designated by **employer** as 'furloughed workers' under the Scheme;
- C. it is not intended to endure for any period longer than **employer** determines is necessary for the purpose of securing the objective in paragraph B;
- D. the UK Government has recently announced support for businesses, including a measure known as the 'Coronavirus Job Retention Scheme' (the 'Government Scheme'). The Scheme is intended to provide a mechanism for designating affected employees of **employer** as 'furloughed workers' for the purpose of the Government Scheme;
- E. it is intended that, once the objective in paragraph B has been achieved, workers furloughed in accordance with this Scheme will return to their normal working arrangements with **employer**, and, in the meantime, will not be subjected to any detriment by reason of their having been designated as furloughed workers; and
- F. **employer** emphasises that its commitment to existing agreed arrangements with the Unions as previously remains undiminished, and nothing contained in the Scheme should be taken as any detraction from those commitments.

The parties agree that the Scheme will operate as follows:

## COLLECTIVE BARGAINING

1. *(insert local collective bargaining arrangement)*

## DURATION AND SCOPE

2. The Scheme is not intended to endure for any period longer than **employer** determines is necessary for the purpose of securing the objective in paragraph B.
3. The Scheme applies to all employees, and any employee may, subject to paragraphs 5 and 6, be designated as a 'furloughed worker'. Employees may be designated as 'furloughed workers' in tranches from different dates

## DEFINITION OF 'FURLOUGHED WORKER'

4. For the purpose of the Scheme, subject to paragraph 4, the term 'furloughed worker' means any employee designated by **employer** as a 'furloughed worker' in accordance with the Scheme who is not required or permitted to attend for work, or perform any duties of employment in accordance with the Government Scheme, for such period as **employer** may specify and for the purposes described at paragraph B, but whose terms and conditions of employment shall otherwise continue as before,
5. If any other definition of 'furlough', or related expressions, is or becomes applicable for the purpose of access to the Government Scheme will result in a review of this agreement with changes the subject of negotiation and agreement between them

## SELECTION

6. **Employer** may decide that any of its employees is to be designated as a 'furloughed worker' in accordance with the Government Scheme for such period as it determines appropriate, subject to such minimum period as may be provided for in the Government Scheme (the extension of the Government Scheme, as of November 2020, has no minimum furlough period).
7. In deciding which employees shall be designated as furloughed workers, **employer** shall have regard in particular to the following categories of employees:
  - (i) employees whose normal duties are wholly or partly incapable of being performed from home;

- (ii) employees whose caring or other responsibilities during the pandemic mean that their capacity to perform the duties of their employment from home is materially compromised;
  - (iii) employees who do not have access at home to appropriate technological means to enable them to perform some or all of their duties from home; and
  - (iv) without prejudice to the above categories, any further employees who **employer** do not require to work for a period of time as a result of the pandemic.
8. Employees on maternity (or other family leave) and sickness leave will continue to be treated in accordance with existing arrangements. On return from maternity (or other family leave) or sickness leave, such employees may be designated as furloughed workers in the same way as other employees.

### **DESIGNATION AS A 'FURLOUGHED WORKER'**

9. **Employer** shall notify any employee who is to be designated as furloughed in writing. Wherever possible notification will be by email or text message, failing which notification will be sent by post. Such notification will include details of the likely initial duration of such designation.
- a. Upon designation as a furloughed worker, the employee shall:
    - (i) not be required to attend for work;
    - (ii) not be required to perform any of the duties of employment;
    - (iii) be required to remain contactable in the usual way;
    - (iv) not be permitted to commence any new alternative employment for another employer without express permission from **EMPLOYER** but **EMPLOYER** will take a sympathetic view of requests where household income faces a reduction; and
    - (v) be permitted to undertake such training as required by **EMPLOYER** from time to time.
    - (vi) be permitted to perform voluntary work for other organisations providing they are not carrying out services for or on behalf of **EMPLOYER** or for any organisation linked or associated with **EMPLOYER** ;
    - (vii) be permitted to perform duties as an elected trade union representative

until such time as they receive further notice, in accordance with paragraph 10.

10. The effective date of any such designation as a furloughed worker shall be the earliest date permitted by the Government Scheme, namely the date on which that furloughed worker stopped work, either due to closure of their work site or notification that they were to stop work.

11. EMPLOYER will provide to any furloughed workers at least two working days' notice of the end of a period of designation as a 'furloughed worker' other than in the circumstances described at paragraph 11 and in circumstances where there is an immediate requirement to provide cover for a member of staff carrying out essential ongoing tasks. The individual circumstances such as caring responsibilities, home location and the need to use public transport to attend work and the underlying health of the individual will be considered when selecting staff for emergency cover.
12. EMPLOYER will use any sectoral principles as discussed between Scottish Government and the Civil Service Trade Unions as the basis for returning to work planning.
13. When a furloughed worker is notified by EMPLOYER that their period of designation as a furloughed worker is to end, their terms and conditions and working arrangements shall from the date specified revert to those which would have been applicable had they not been designated as a furloughed worker. Any such employee may be designated again from a future date as a 'furloughed worker' in accordance with the Government Scheme and the Scheme shall apply to them in the same way as for any other employee.
14. A furloughed worker will stop being designated as a furloughed worker if:
  - a. their employment with EMPLOYER terminates for any reason, in which case their designation as a furloughed worker shall terminate at the same time as their employment terminates; or
  - b. they commence any type of family leave, including maternity leave, paternity leave, shared parental leave or adoption leave, in which case they will commence their family leave on the same terms as would usually apply to that family leave.

## **COMMUNICATIONS: ALL EMPLOYEES**

15. EMPLOYER has asked all employees designated as furloughed workers to confirm the most effective means of communication to EMPLOYER, so that communications regarding furlough arrangements or related matters can be communicated as efficiently as possible. The trade unions will also ask their members to comply. EMPLOYER shall communicate regularly with furloughed employees.

## **PAY WHILE 'FURLOUGHED'**

16. The initial position, and the objective throughout, is that all furloughed workers will continue to receive their usual wages as prior to the pandemic. In the case of furloughed workers, this will mean that 80% of their usual wage costs, subject to a maximum of £2500 per month, plus the associated Employer National Insurance Contributions and minimum automatic

enrolment employer pension contributions on that wage will be reimbursed by HMRC to EMPLOYER, with the remaining 20% of the usual wages still being paid by EMPLOYER to each furloughed worker in the usual way, but without reimbursement under the Government Scheme. (The percentage reimbursed by HMRC will reduce to 70% for July 2021 and 60% for August and September 2021, however EMPLOYER commits to continuing to pay furloughed workers their usual wages if they are furloughed at that time.) Income tax, National Insurance Contributions and any other statutory deductions will be deducted from the furloughed workers' monthly remuneration in the usual way and furloughed workers shall be paid in arrears on the normal monthly payment date.

17. In the event that EMPLOYER determines that it is no longer viable or sustainable to continue to meet employees' wages in full for reasons occasioned by or arising from the pandemic, there will be negotiations with the Unions regarding any changes to the Scheme and this agreement.
18. No furloughed worker will, as a result of being designated as furloughed, be disadvantaged in relation to their colleagues on the same grade who have not been designated as furloughed.
19. Except as provided for in this Scheme, all other terms and conditions of the furloughed workers' contracts of employment shall remain unaltered whilst they are designated as a furloughed workers.

## **HOLIDAY**

20. Furloughed workers will continue to accrue holidays during the period when they are designated as furloughed workers in accordance with their contracts of employment.
21. Furloughed workers should not be compelled to take annual leave whilst designated as furloughed workers.

## **DURATION OF THE SCHEME**

22. The Scheme shall continue in force until the end of the period in respect of which payments to reimburse employers are made under the Government Scheme or such longer period as EMPLOYER may determine as necessary to implement the arrangements under this Scheme.
23. EMPLOYER reserves the right to make reasonable amendments to the Scheme should the UK Government change or terminate the arrangements relating to the Government Scheme or should any guidance from the Scottish Government necessitate any such amendments. Notification of any changes will be provided in writing to the Unions. A consultation period of 5-days will be applicable before any changes become effective. All affected furloughed workers will be advised in writing of the exact changes and the date these changes will become applicable from.

**LEGAL STATUS OF THIS AGREEMENT**

- 24. For the purposes of s.179 *Trade Union and Labour Relations (Consolidation) Act 1992* it is confirmed the parties intend that this agreement shall be a legally enforceable contract.
  
- 25. This Agreement will be governed and construed in accordance with the laws of Scotland. Each party hereby submits to the exclusive jurisdiction of the courts of Scotland as regards any claim, dispute or matter arising out of or in connection with this Agreement and its implementation and effect.

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For EMPLOYER

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For PCS

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For Prospect

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For FDA

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Date