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HMRC quizzed by Parliamentary Treasury Committee on Job Retention Scheme (UK)

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Here is a quick glimpse behind the scenes of parliamentary process – some highlights from the Parliamentary Treasury Committee meeting yesterday when officials from HMRC were quizzed by the Committee about the Coronavirus Job Retention Scheme, plus some thoughts of our own in bold.

The new scheme will be up and running on 20 April to allow HMRC to make payments before 30 April. **There have been rumours of delays but there was no sign of that at the meeting. If ever there was a time for a spot of judicious expectation management, surely that would have been it, so we must assume that HMRC is pretty gung-ho about this. After all, given the background of the government's record with major IT projects, nothing can go wrong**.

HMRC has been doing large-scale testing to ensure the scheme will be able to cope with the large volume of claims that is expected. It wants employers to be able to "self-serve" so that they don't need to contact HMRC once the scheme is up and running. To that end, further "practical operational" guidance will be coming out later this week telling employers how to compile their claims so they are ready to submit them once the scheme goes live. **It is to be hoped that this does not add materially to the reassuringly limited list of required information set out in the guidance issued on 4 April.**

In response to questions about how HMRC intends to enforce the scheme, it said that it expects the vast majority of employers to "do the right thing" but that if employers "knowingly try to defraud us", HMRC could take criminal action against those businesses. **That will probably mean only the most obvious stuff — claiming for employees who don't exist, who have been sacked and not re-hired or who are still working – there is insufficient clarity around most of the rest of the scheme to allow it to be used as the basis for criminal liability, because establishing "knowing" culpability as opposed to administrative slip or misunderstanding would be more or less impossible as matters stand.**

HMRC will risk-assess claims in the background and has the ability to stop "high risk" **(which was undefined)** payments from going out before they have been checked. It will have the ability after the event to go into employers and check claims, although they've not developed a plan for doing this yet. **They will need to do so soon, then, as a clear set of parameters for any such retrospective audit will be a key component of its being respected – knowing fraud, obviously, but what**

about all those little issues around whether the employer really needed the money (the "severely affected" operations point referred to in the guidance) or claims for period of furlough in which the employee took leave or was sick? How fussy will HMRC be in relation to those minimum 3 week periods if they are interrupted by an emergency day working?, and so on. If over the next five years HMRC seeks money back from employers in respect of steps they took in good faith to protect their employees in some cases before the scheme was announced, let alone any coherent guidance issued, let alone any actual law made, then that brings considerable political risk for the government.

HMRC confirmed that, as per the guidance issued so far, furloughed workers will be able to carry out training during the furlough period. In response to concerns that employers may need more guidance on what would count as training for these purposes, HMRC said that if further guidance is needed, this could be provided. Th**e existing principle though that it should not bring direct financial benefit to the employer seems clear enough, you might think, and public policy must surely dictate a reasonably relaxed view of people using otherwise dead time to improve their professional skill-sets.**

HMRC confirmed that employers can rotate staff on furlough, subject to the three-week minimum turn-around time.

In response to a request that the scheme be extended to cover employees on reduced hours, HMRC said that the primary purpose of the scheme was to protect people from being made redundant or laid off and not to supplement the income of those people who had gone on to short-time hours. It said that support was available to those individuals via the welfare system.

In response to a question about calculating what a regular wage is (i.e. the number to which you apply the 80% cap), HMRC stated that this is based on what employers "are obliged to pay", but not payments which employers make at their discretion. **This is what Saturday's guidance said but does not deal with the granular questions within that phrase – you are obliged to pay overtime if it has already been worked ("past overtime" in Saturday's words) but what if you were not obliged to offer the overtime in the first place? If you get a quarterly bonus based on results, does that count as "regular"?, plus a hundred other echoes of the unresolved fringes of the holiday pay calculation debate.** HMRC says it may expand on its guidance in this respect "if needed", **but (a) it clearly *is* needed and (b) for the purposes of that five year right of look-back, given that there is less than a fortnight to the launch of the claim portal, it will not be able to blame employers which stick a moistened finger in the wind and do their best if there is no clearer steer than this.**

Unfortunately and rather surprisingly there were no questions from the committee about holidays. **One can only hope that this means that HMRC actually is much less interested in the swirls and eddies of academic and legal debate about the interplay of leave and furlough than some commentators had feared. As at Saturday at least, the guidance indicated that HMRC did not need to be told whether any employees within a furlough funding were on leave at any point, and surely you could expect that if it were to be the subject of any possible disqualification or claw-back by HMRC, the guidance would have said *something* about it by the third attempt.**

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