

Extended Furlough Scheme Guidance issued

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As we reported last week the Coronavirus Job Extension Scheme (CJRS) has been extended until 31 March 2021 across the UK. Last night the Government issued 11 sets of Guidance on the operation of the new scheme (links to each document set out below). In this alert we detail the key points in the new Guidance.

Financial support:

- The extended furlough scheme will reflect the CJRS in August, so the Government contribution will be 80% of wages up to a cap of £2,500. Employers will only pay Employer NICs and pension contributions on the amount paid to employees.
- The Government will, however, review its position in January to see if employers should contribute more.
- As before, employers can choose to top up employee wages but do not have to do so.

Flexibility:

Flexible furlough is allowed under the extended CJRS; businesses have flexibility to bring furloughed employees back to work on a part time basis or furlough them full-time. For worked hours, employers must pay employees according to their employment contract and will be responsible for paying the tax and NICs due on those amounts.

Employee numbers:

There is no maximum number of employees employers can claim for from 1 November 2020. This is a change from the previous iteration of CJRS, which stated that the amount of employees claimed for in any single claim period starting from 1 July 2020 could not exceed the maximum number of employees claimed for under any claim ending by 30 June 2020.

Eligibility - Employers:

- In terms of eligibility for the extended scheme, neither the employer nor the employee needs to have previously used the CJRS.
- The employer Guidance (document link 1 below) states that employers can furlough employees and apply for a grant “if you cannot maintain your workforce because your operations have been affected by COVID-19”. The employee Guidance (document link 9 below) states that the scheme is designed to help employers whose operations have been severely affected by coronavirus to retain their employees and protect the UK economy. The Guidance does not specify what a business would have to do to show they have been severely affected so it seems the wording allows businesses some leeway but is designed to discourage abuse of the system.
- All employers with a UK bank account and UK PAYE schemes can claim the grant, although as with the original CJRS, the Government expects that publicly funded organisations will not use the scheme. Partially publicly funded organisations may be eligible where their private revenues have been disrupted.

Eligibility - Employees:

- The scheme is available in respect of employees, on any type of contract, who were on the employer’s PAYE payroll by 23:59 on 30 October 2020. This means a Real Time Information (RTI) submission notifying payment for that employee to HMRC must have been made between 20 March and 30 October 2020. This may differ where you have re-employed an employee after 23 September 2020 (see below).
- **Rehiring people:** If you made employees redundant, or they stopped working for you on or after 23 September 2020 you can re-employ them and put them on furlough. This applies as long as the employee was employed and on PAYE payroll on or before 23 September 2020. This means an RTI submission notifying payment for that employee to HMRC must have been made between 20 March and 23 September 2020.
- **Employees on fixed term contracts:** If the employees fixed term contract has not already expired it can be extended or renewed.
- **Apprentices:** Apprentices can be furloughed in the same way as other employees and they can continue to train whilst on furlough. However, they must be paid the relevant National Minimum Wage as appropriate for all the time they

spend training.

- **TUPE:** a new employer is eligible to claim in respect of the employees of a previous business transferred if the TUPE or PAYE business succession rules apply and the employees being claimed for have previously had a claim submitted for them by their prior employer. The Guidance also states that the employees being claimed for should have been employed by their prior employer on or before 30 October 2020 and transferred from them to their new employer on or before 1 September 2020. We think the reference to September must be an error and it should be November - we are awaiting urgent clarification.
- **Employees who have more than one job or other duties:** Employees can be furloughed in one job and receive a furloughed payment but continue working for another employer and receive their normal wages.
- **Family leave:** If an employee decides to end their maternity leave early to enable them to be furloughed (with the employer's agreement), they will need to give at least 8 weeks' notice of their return to work and the employer will not be able to furlough them until the end of the 8 weeks. If an employee is getting Maternity Allowance while they're on maternity leave, they should not get furlough pay at the same time.
- **Employees who are clinically extremely vulnerable:** The guidance on clinically extremely vulnerable people was also updated yesterday. Clinically extremely vulnerable employees are "advised" to work from home over the period of lockdown. If the employee cannot work from home the Guidance says that such employees are now advised not to go to work for the period of the restrictions. The CJRS Guidance (document link 2 below) says those who are clinically extremely vulnerable or at the highest risk of severe illness from Covid-19 and following public health guidance (i.e. been sent a shielding letter) can be furloughed.
- **Employees who are self-isolating or on sick leave:** The Guidance emphasises that it is not intended for short-term absences from work due to sickness or self-isolating. For employees on long-term sick leave, it is up to employers to decide whether to furlough such employees. If an employee becomes sick while furloughed the employer can choose to move those employees on to Statutory Sick Pay (SSP) or keep them on furlough, at their furloughed rate.
- **Other people employers can claim for:** Employers can claim for other types of employees as long as they are paid via PAYE:
 - office holders (including company directors)
 - salaried member of Limited Liability Partnerships (LLPs)
 - agency workers (including those employed by umbrella companies)
 - dependant contractors (referred to as limb (b) workers)
 - contingent workers in the public sector
 - contractors with public sector engagements in scope of IR35 off-payroll working rules.

Notice periods:

- The employer Guidance (document link 1) says "*You can continue to claim for a furloughed employee who is serving a statutory notice period*" - interestingly it omits reference to "contractual notice" in this document but in the employee Guidance (document link 9) it does include reference to "*contractual notice*". We expect this is another drafting error and that currently employers could claim the grant for both statutory and contractual notice - although we await clarification.
- Importantly employers should note this may soon change in any event. In document link 2 below, it says "*The government is reviewing whether employers should be eligible to claim for employees serving contractual or statutory notice periods and will change the approach for claim periods starting on or after 1 December 2020, with further guidance published in late November*". Employers considering dismissals should therefore be aware that the costs of notice pay after 1 December may not be covered by the scheme.

Holiday pay:

- The Guidance confirms that, as before, employees can take holiday whilst on furlough.
- Employees should be paid at 100% of normal rate of pay for holiday periods.
- If an employee is on flexible furlough, any hours taken as holiday should be counted as furlough hours, not working hours, meaning the furlough pay can be claimed for but employers will need to top up the employee's holiday pay to meet the 100% threshold.

Calculations and operation of the scheme:

- Employers are able to claim from today (11 November) for claim periods starting on or after 1 November.
- Document link 4 below contains a link to a calculator to assist employers to calculate their claim. Document links 7 and

8 also provide a number of examples on how to calculate claims for full furlough and flexible furlough. For flexible furlough employers will need to work out an employee's usual hours before using the calculator.

- Although the process for making a furlough claim is the same, there is a shorter claim window. For example, claims relating to November 2020 will have to be made by 14 December 2020, with claims relating to each subsequent month being submitted by day 14 of the following month.

Publication of use:

Another indication that the Government is cracking down on abuse of the CJRS is the statement in the Guidance that from December 2020, HMRC will publish employer names for companies (including LLPs) and the company registration number of those who have made claims under the scheme for the month of December onwards. The Employee guidance also encourages employees to report fraud.

What about the other job support schemes?

As a result of the further extension of the CJRS, the purpose of the **Job Retention Scheme Bonus**, which was a bonus payable to employers of £1,000 per employee it retained until 31 January 2021, has therefore changed so the Government has postponed this. The Chancellor has said the Government will “redeploy this at the appropriate time”.

The **Job Support Scheme (closed and open)** (which was due to start on 1 November 2020) seemingly remains postponed too and we await confirmation as to what the plans are for that scheme or whether it will be shelved entirely.

What should employers do now?

As with previous versions of the CJRS, employers will need to have employee agreement to furlough employees and use the scheme. For those employees who were furloughed in October employers should still clearly set out the figures and working arrangements relevant to the new extension and obtain employee agreement.

Employers can agree retrospectively to furlough someone with effect from 1 November 2020, but this must be done quickly as the agreement to retrospectively claim furlough must be in place by the end of the day this Friday, 13 November.

Guidance Documents and Treasury Direction:

1. [Check if you can claim](#)
2. [Check which employees you can put on furlough](#)
3. [Steps to take before calculating your claim](#)
4. [Calculate how much you can claim](#)
5. [Claim for some of your employees' wages](#)
6. [Report a payment in PAYE RTI to HMRC](#)
7. [Examples of how to calculate wages](#)
8. [Full examples of how to calculate the amount you should claim - flexible furlough](#)
9. [Employee guide to furlough](#)
10. [Pay CJRS grants back](#)
11. [Individuals who are not employees](#) - covers agency workers, company directors, IR35 contractors and office holders.

The Treasury Direction, which sets out the legal framework for the scheme, was last updated on 25 June 2020 and applies in relation to claims up to and including 31 October 2020. We are expecting a further update to the Treasury Direction covering the extension to CJRS to be issued soon.

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