

COVID-19

Operator Employment Support

*15 April 2020 then subsequently
updated 17 April 2020*



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IMPORTANT UPDATES – 17 APRIL 2020

1. PUBLISHED GUIDANCE DOCUMENT TO MAKE A CLAIM

At 7:06pm on 17 April 2020, the government published a guide explaining the information that employers need to provide to HMRC to make a claim through the Coronavirus Job Retention Scheme ('CJRS'). It also describes the processes involved.

IMPORTANT – if you are a an employer making a claim, you need to follow the processes explained in the guidance page which can be accessed by clicking: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880092/Coronavirus Job Retention Scheme step by step guide for employers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880092/Coronavirus_Job_Retention_Scheme_step_by_step_guide_for_employers.pdf)

2. FURLOUGH SCHEME EXTENDED

The Chancellor, Rishi Sunak, has announced that the CJRS has been extended by one month. The furlough scheme was due to end on 31 May 2020 but will now run until the end of June to continue to protect jobs across the country.

One of the reasons behind today's announcement may be that many large businesses would have been due to start the 45-day collective consultation period today in order to comply with the rules on collective redundancy if they had been planning to make mass redundancies following the end of the furlough scheme on the original end date of 31 May 2020.

The scheme will continue to be monitored by the government to enable people to return to work as soon as it is safe to do so.

FURTHER UPDATES, AS AT 15 APRIL 2020 CAN BE FOUND BELOW:

The information below is based on current guidance produced by the UK Government, the Direction (as defined below) and from various announcements, as such the information may be subject to change and is **valid as at 15 April 2020**

Note: this this update does not constitute legal advice and operators are advised to seek specific advice in relation to their business.

As well as updating published guidance regarding the Coronavirus Job Retention Scheme (“CJRS”), HM Treasury has issued a direction to HMRC outlining the terms of the CJRS and the infrastructure and application of that scheme (“the Direction”). This Direction will take precedent over Govt guidance in deciding disputes or misunderstandings. Whilst this Direction is likely to be definitive, there is no prohibition on amendments being made going forwards or further directions to HMRC.

The Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction (the “Direction”) is available here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION - 33 FINAL Signed.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION_-_33_FINAL_Signed.pdf)

The full updated Govt guidance is available by visiting: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Further publications and resources provided by Backhouse Jones can be found here: <https://www.backhousejones.co.uk/covid-19-resource-hub/>

Key Points

1. The PAYE System
2. Directors

3. TUPE
4. Payroll Consolidation
5. After you've claimed
6. Tax treatment of grants awarded under CJRS

The term "furlough" has not been commonly used within UK employment but was introduced by the Chancellor of the Exchequer when announcing the intention to implement the CJRS. It means that an employee is granted a leave of absence from work whilst maintaining the employment relationship. In its current context it has been utilised by the government to prevent mass redundancies and maintain employment so that business can continue after the Coronavirus pandemic.

Under the CJRS, employees can be furloughed, and employers can apply for a grant to cover 80% of the monthly wage costs for furloughed employees, up to a maximum of £2,500 plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions.

In order to make use of this furlough, the Direction appears to require that the employer and employee agree in writing that the employee will cease all work for that employer whilst they are furloughed.

IMPORTANT: If you have furloughed staff before now, you should check how those employees have been furloughed. If there is no written agreement in place as required by the Direction, they may not fall within the scope of the Direction and CJRS, and consequently employers may not be able to claim back those wages.

The amount of salary claimed for the furloughed employee must disregard anything which is not "regular salary or wages" according to the Direction. This includes disregarding performance related bonuses or discretionary payments (including tips), any conditional payments and any non-financial benefits. Further to this, the employer furloughing employees cannot claim for any salary which is "conditional on any

matter.” There is argument to suggest that this excludes any salary payments which the parties have agreed are conditional on the CJRS paying out to the employer.

The Employer can claim for earnings which it “reasonably expects to be paid” to the employee according to the Direction. This would seem to include any deferred earnings which have been put back until the CJRS pays back claimed wages to the employer (provided that those earnings are not conditional on the CJRS paying out).

1. The PAYE System

Previously, guidance published by the UK Government stated that in order to claim for the wage costs of furloughed employees, an employer must have a PAYE payroll scheme created and started on or before the 28 February 2020, and that the furloughed employees must be registered on that PAYE payroll scheme on or before the same date.

THIS IS NO LONGER CORRECT

The latest Govt guidance and the Direction changes this position. Now, in order to reclaim the wage costs of furloughed employees under CJRS, an employer must have;

- created and started a PAYE payroll scheme **on or before 19 March 2020**;
- enrolled for PAYE online; and
- a UK bank account.

This brings into scope employees that were registered on an employer’s PAYE payroll scheme after 28 February 2020, but **on or before 19 March 2020**. This should cover more employees, provided employers have submitted real time information payroll data on or before 19 March 2020.

Note: you can only claim for furloughed employees that were on your PAYE payroll on or before 19 March 2020 and which were notified to HMRC on an RTI submission on or before 19 March 2020.

If an employer made employees redundant, or they stopped working on or after 28 February 2020, that employer can re-employ them, put them on furlough and claim for their wages through the CJRS. This applies to employees that were made redundant or stopped working after 28 February, even if the employer does not re-employ them until after 19 March 2020. This applies as long as the employee was on payroll as at 28 February 2020 and had been notified to HMRC on an RTI submission on or before 28 February 2020.

The CJRS scheme is not limited to just those employees who would otherwise be made redundant. It applies to any who are furloughed "by reason of circumstances as a result of coronavirus or coronavirus disease" according to the Direction.

2. Directors

A director who is furloughed can only work for the business or company with whom they have their service agreement to fulfil a duty or obligation imposed on their position by an Act of Parliament relating to the filing of company's accounts, or the provision of other information that relates to the administration of the business.

3. TUPE

A new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 19 March 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

You can read more on the TUPE rules here:

<https://www.gov.uk/transfers-takeovers>

You can read more on business succession here:

<https://www.gov.uk/guidance/payroll-what-to-do-if-your-business-merges-or-changes-ownership>

4. Payroll Consolidation

Where a group of companies have multiple PAYE schemes and there is a transfer of all employees from these schemes into a new consolidated PAYE scheme after 19 March 2020, the employer will be eligible to furlough those employees and claim the grants available under the CJRS.

5. After You've Claimed

HMRC will check your claim and, if you're eligible, pay it to you by BACS transfer to a UK bank account. You must pay the employee all the grant you receive for their gross pay in the form of money. Furloughed staff must receive no less than 80% of their reference pay (up to the monthly cap of £2,500), unless their contractual pay varies in which case a different method of calculation applies.

Employers cannot enter into any transaction with the worker which reduces the wages below this amount. This includes any administration charge, fees or other costs in connection with the employment.

When the government ends the CJRS, the employer must make a decision, depending on the circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

6. Tax Treatment of Grants Awarded Under CJRS

Payments received by a business under the CJRS are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

If you require any specific legal advice in respect of your employees or anything further mentioned in this update, please don't hesitate to contact Backhouse Jones at 01254 828300.

Disclaimer: This note is not intended to constitute legal advice and operators should seek specific advice which will be provided based on their particular circumstances.

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