Factsheet on Job Retention Scheme during Covid-19
Issued on 20 April 2020

All information in this factsheet is based on our current understanding of the rules as of 20 April 2020. Please ensure you keep up to date with the latest government guidance.
COVID-19 (C-19) JOB RETENTION SCHEME (CJRS)

KEY POINTS

- The scheme was announced by the Chancellor on 20 March 2020
- Any employer “severely affected” by C-19 qualifies for government funding
- The funding is available to be claimed from 08:00 on 20 April 2020
- The scheme is based on the employees in post on 19 March 2020 – previously this was 28 February
- The scheme was initially intended to run from 1 March 2020 to 31 May 2020, but has now been extended to cover June.
- Basic guidance for employers and employees has been produced by HMRC
- Separate guidance has been published relating to government assistance for the self-employed
- Employer NICs and basic level pensions auto-enrolment contributions are also recoverable
- The minimum furlough period is three weeks, to allow for flexibility in the workforce
- Workforce planning and business cash flow projections are key to the success of the scheme
- Robust decision-making audit trails are recommended to protect employers who make claims
- HMRC retains the right to make retrospective checks on any claims for assistance
- A whistle-blowing service is to be made available online for employees (or others) to call out unwanted behaviours

It is important to note that the CJRS is essentially an add-on to existing employment law principles, but with inevitable employment taxation, payroll and finance-related consequences. This fact sheet relates to the taxation and payroll issues only. All employers affected should take independent legal advice.

WHAT IS FURLOUGH?

The UK Government has adopted the meaning of “temporary leave of employees due to special needs of the employer or the economy as a whole”. Furlough is therefore a temporary measure to put employees on leave. It does not mean that the employees cease to be employees of the business.

Generally speaking, a business can decide in the current circumstances to furlough an employee whose position they might otherwise have needed to make redundant or laid off without pay. These actions might result in potential cash flow difficulties for the employer in the case of the former, and a risk of tribunal claims for breach of contract/unlawful deductions in the case of the latter.

Note that a furloughed employee will retain all of the employment rights they had prior to being furloughed. That includes holiday accrual, SSP entitlement, maternity rights, rights against unfair dismissal and to redundancy payments.

The key thing to remember is that employees cannot be furloughed if there is no risk of redundancy and there is paid work available for them to do.

WHAT IS THE GOVERNMENT OFFERING TO FUND?

The Government is offering to pay capped, non-repayable grants covering:
- The lesser of 80% of basic salary or £2,500 per month
- The value of the employer’s NICs attributable to that payment, and
- The value of minimum automatic enrolment pension contributions attributable to that payment

The guidance now also contains further clarification on the apportionment of NICs and pension contributions.
This means that the maximum CJRS grant will be based on a total cost of £37,500 per annum/ £3,125 per month per employee. The element covering the salary must be paid in full to the furloughed employee.

Note – where applicable apprenticeship levy remains payable by the employer, this cost will not be covered by the CJRS grant.

WHO DOES THE SCHEME COVER?

**Businesses**

Any UK organisation with employees and a UK bank account can apply, including:

- Businesses
- Charities
- Recruitment agencies (agency workers paid through PAYE)
- Public authorities (although most of these are not expected to claim)
- Companies in administration

The grant income received must be included as income in the business’s calculation of its taxable profits, and employment costs deducted when calculating the business’ taxable profits.

**Directors**

Work undertaken by a director of a company to fulfil a duty or other obligation arising by or under an Act of Parliament relating to the filing of company accounts or provision of other information relating to the administration of the director’s company must be disregarded for the purposes of paragraph 6.1(a) of the Treasury Direction issued on 15 April 2020.

**Employees - and workers?**

The scheme covers all employees and workers in place and on the payroll at 19 March 2020\(^1\), including:

- full and part-time employees;
- employees on flexible or zero-hour contracts
- Employees whose positions were made redundant on or after 28 February due to earlier announcements or immediate cash flow difficulties can still be re-employed and then furloughed, even if they are not re-employed until after 19 March. See the guidance for further details.

Note that employees on agency contracts (i.e. paid by an employment business subject to PAYE deductions) are also eligible where the agency makes the claim for assistance.

The HMRC guidance states that “workers” are included and yet the Treasury Direction issued on 15 April 2020 by HM Treasury to HMRC only makes reference to “employment” in the context of Income Tax (Earnings and Pensions) Act 2003 to include people working under contracts of service, agency workers and office-holders, but which would exclude limb (b) workers.

In the guidance, it says that “Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.” Bearing this in mind, we should assume unless specifically told otherwise in the guidance, that workers are in fact included in these assistance provisions.

Under the Coronavirus Act 2020 – Functions Direction the following important points were noted:

1. Employer must have a PAYE scheme in place by 19 March 2020.
2. Separate claims must be made in relation to each PAYE scheme.

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\(^1\) RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020
3. The furlough agreement (that work will cease) between employer and employee MUST be in writing.
5. Entitlement to a payment of CJRS is without prejudice to any entitlement to a payment under any similar scheme arising from the Coronavirus Act 2020 s.76

ARE THE PAYMENTS TAXABLE?

All payments made to furloughed employees are subject to Income Tax (PAYE) and NICs deductions through payroll in the usual way.

EMPLOYMENT ALLOWANCE (EA)

Further clarity has now been received on the EA. In the guidance, the following explanation states:

“In calculating the total employer National Insurance contributions paid in any pay period, the employer should subtract any Employment Allowance used in that pay period. If you have not, or do not expect to pay any employer National Insurance contributions in a pay period as a result of the Employment Allowance, you should not claim any employer National Insurance contributions costs for furloughed employees in that pay period. If you expect to exhaust any Employment Allowance in a pay period then you should claim the lower of the employer National Insurance contributions grant calculation, and the employer National Insurance contributions costs that you paid, or expect to pay across your entire payroll.”

Further down the page, the guidance goes on to state:

“Before you claim for employer National Insurance contributions
Employer National Insurance contributions is payable on all pay over the secondary threshold at a rate of 13.8%. Employers may be eligible for the Employment Allowance. In the 2019 to 2020 tax year the allowance was £3,000 and was available to all employers. From 6 April 2020 the Employment Allowance is £4,000 but is only available to employers whose Employer Secondary National Insurance contributions liability in the previous year was under £100,000.
Employers can use the Employment Allowance to reduce their employer National Insurance contributions bill across each payroll until the allowance is exhausted or the end of the tax year, whichever comes first.

No employer National Insurance contributions due
If there is no employer National Insurance contributions due then the amount of the grant towards employer National Insurance contributions is zero. This could be the case for:
- apprentices under 25 (category H)
- employees under 21 (category M)
- employees under 21 who can defer NI because they’re already paying it in another job (category Z)
- employers whose employer National Insurance contributions bill is reduced to £0 by the Employment Allowance”

WHAT REFERENCE WAGE/SALARY SHOULD BE USED AS THE BASIS FOR THE CALCULATIONS?

The value of the gross “reference” wages/salaries payable to the employees on 19 March 2020 are to be used as the basis for calculating the 80% calculation, or capped at £2,500, whichever is the lower. Pay rises awarded since then are not to be included. Past overtime and commission payments (where the latter are contractually received) can be included, although further clarity and definitive statements are still required on commission payments.

Guidance is also now available on holiday pay.

Reference salary
Reference salary for CJRS purposes is not to take account of anything which is not “regular salary or wages”. Paras 7.3 to 7.10 of the Treasury Direction refers to this in detail.

FIXED RATE OR VARIABLE PAY?

When considering whether an employee is fixed rate pay or variable pay, it is necessary to consider whether the employee has their working hours for the year specifically mentioned in their contract of employment – this fits with the legislation on National Living/ Minimum Wage.

This may mean that strictly speaking, anyone who has a weekly or monthly hours total mentioned in the contract is not “fixed” and therefore variable by default. For any fixed rate employees, the reference pay is calculated on the salary paid to them on or before 19 March 2020.

For all other employees, the term “regular salary or wages” should be referred to. It is vital the payments are calculated correctly so that the employee receives no less than they are entitled to – grants will not be paid to employers whose figures differ from those of HMRC – although this is likely to be helped greatly by the introduction of a calculator in the portal software which employers can use.

Employers should seek legal advice in the event they require assistance with this.

WHAT IF AN EMPLOYEE’S PAY VARIES?

Where an employee has been engaged for 12 months or longer prior to the claim being made, the employer can claim the higher of:

- the same month’s earning from the previous year
- average monthly earnings from the 2019-20 tax year

Where the employee has been employed for less than a year, the employer can claim for:

- an average of their monthly earnings since they commenced working for that employer, or if only employed since 19 March 2020, a pro-rated earnings calculation can be carried out.

WHAT PAYMENTS ARE EXCLUDED FROM REFERENCE PAY CALCULATIONS?

The following payments are specifically excluded from the ‘reference pay’ calculations:

- Bonuses
- Fees
- Discretionary overtime
- Discretionary commission payments
- Service charges paid by customers and passed on to hospitality workers

ARE EMPLOYEES ALLOWED TO WORK DURING A PERIOD OF FURLOUGH?

Employees are not allowed to work for the employer who has furloughed them during the furlough period. There are some exceptions for emergency volunteering arrangements and for Directors’ duties (see above).

CAN AN EMPLOYER PAYING FURLOUGH PAYMENTS BE IN BREACH OF NATIONAL MINIMUM WAGE (NMW) REGULATIONS?

No. Furloughed employees are not deemed to be working. Therefore, they have no entitlement to receive NMW/NLW. If they are un-furloughed and return to work, they once again become entitled to payment of NMW/NLW, which rises from 1 April 2020 in the usual way.

BEIS has issued a bulletin relating to NMW for this purpose.
Furloughed employees who are required to complete online training courses are classified as working whilst on furlough. They must be paid NMW/NLW in the usual way while they are carrying out this work even though the furlough arrangements effectively continue.

DEALING WITH HOLIDAY ENTITLEMENT, SICK LEAVE, MATERNITY, ADOPTION and PATERNITY PAY/LEAVE AND SABBATICALS

Holidays

Existing statutory and contractual principles apply unless (in respect of contractual leave) the parties agree otherwise. For annual leave carry-overs, please see the guidance available. Guidance is now available on calculating holiday pay.

See also the acas guidance on this.

Sick Pay

Employees who are sick prior to/ leading into the commencement of the furlough period will be on occupational or statutory sick pay. They can be furloughed after they are fit enough to return to work. If they are sick during the furlough period this sickness period will be disregarded (so no need to place on SSP).

People who are entitled to be shielded can be furloughed – specific guidance exists on this matter, as it does for people in vulnerable groups. In addition, shielding now also qualifies for sick pay in accordance with SI 2020/427.

Maternity Pay, Adoption Pay, Shared Parental Pay

Guidance on GOV.UK states that if an employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply

We understand that a woman returning from a period of compulsory maternity leave can be furloughed.

Sabbaticals

Periods of unpaid leave/sabbaticals which are unrelated to C-19 cannot be furloughed if the employee went on unpaid leave on or before 28 February. However, if they went on unpaid leave after 28 February, they can be furloughed.

CAN EMPLOYEES MOVE IN AND OUT OF FURLOUGH TO CATER FOR FLEXIBLE BUSINESS REQUIREMENTS?

Furloughed employees must be on furlough for a minimum of three weeks. An employee can be un-furloughed after that and then re-furloughed (for another minimum period of three weeks). During furlough, the employee must not perform any duties.

A furloughed employee can take part in emergency volunteer work as long as that work does not provide services to customers or generate revenue for their employer.

HOME WORKING

The UK Government called for as many people to work at home as possible from 16 March 2020. As such, many people who have never worked from home before are now doing so.

Fixed tax-free allowances are available to people working from home on a permanent or regular pattern basis, and there is also the question of payments being made in respect of equipment etc.

Permanent working from home allowance
An allowance payable for “home working arrangements” which is intended to provide assistance with the cost of heat and light where an employee is based at home can be paid tax free. For the 2020/21 year this payment has been raised to £6 per week or £26 per month (s.316A ITEPA 2003) from £4 per week (£18 per month) for the prior tax year.

The Employment Income Manual EIM01472 provides detail on this.

The guidance now provides that the tax-free allowances can be paid to people who are working at home during the C-19 period.

**Various issues relating to equipment and facilities during C-19 period**

- Mobile phones and SIM cards provided by the employer with no restriction on private use, and limited to one per employee, are non-taxable
- If an employee already pays for broadband, then no additional expenses can be claimed but where this is required to work from home and was not already available, the employer can reimburse the employee for the broadband fee, and this would be non-taxable. The broadband is provided for business purposes in this instance, so any private use should be limited
- Laptops, tablets, computers, and office supplies that are used primarily for business purposes and not significant private use are non-taxable
- If an employer reimburses expenses for office equipment that an employee has purchased, this is taxable and should be reported on employer PAYE Settlement Agreements
- A salary advance or a loan to help employees in times of hardship counts as an employment-related loan. Loans provided below the value of £10,000 in a tax year are non-taxable
- For employees who need to self-isolate, but cannot do so in their own home, employers can reimburse hotel expenses and subsistence costs, but these are taxable
- For employees utilising their own vehicle for business, employers can pay approved mileage allowance payments of 45p per mile up to 10,000 miles, free of tax and National Insurance (NI) contributions. It is 25p per mile beyond the 10,000-mile point. If employers do not pay mileage allowance, employees can claim tax relief through their Personal Tax Account

Any taxable expenses or benefits relating to coronavirus can be reported on employer PAYE Settlement Agreements, so that the employer can settle tax and NI contributions on expenses or benefits. The items must be directly related to C-19 – for example, a new desk can go onto the PAYE Settlement Agreement, but a new sofa cannot.

Employers who already payroll benefits in kind may continue to report expenses and benefits via payroll and may also continue to report expenses and benefits through P11D returns.

There is no requirement to report non-taxable expenses or benefits to HMRC.

**USING COMPANY CARS & VANS WHILST ON FURLOUGH**

Guidance on whether employees should be using company cars/vans whilst on furlough is not yet available – but ICAS understands that many lease companies have advised fleet managers that the car should be parked in a safe place during furlough and not be driven. The cars are presumably insured for private use anyway – so it would be up to each employer to check the position in terms of its own car fleet and issue a written policy instruction to its company car driving population.

The vehicles will still need to be returned as benefits in kind on P11D by 6 July 2020 and Class 1A NICs paid on the benefit value. However, further guidance is still awaited in terms of the ability to reduce the benefit in kind value where the car has not been permitted to have been used for 30 or more consecutive days.

**RESIDENCE AND DOMICILE ISSUES**
HMRC has attempted to respond as quickly as possible in this regard. On 19 March 2020, HMRC provided specific C-19 guidance in an update to its manual at RDRM11005.

On 9 April 2020 the Chancellor notified the Treasury Select Committee that he intends to amend the Statutory Residency Test (SRT).

This will ensure that any period(s) between 1 March and 31 May (ICAS is waiting to see if this is to be further extended to 30 June in line with CJRS) spent in the UK by individuals working on COVID-19 related activities will not count towards the residence tests.

These changes only support those people whose skillsets are currently required. The qualifying criteria will therefore be designed so that the relaxation of the rules is tightly targeted, minimising the risk of abuse.

The Government will also keep the duration of this measure under review as the situation develops.

HOW DOES THE EMPLOYER GRANT CLAIM PROCESS WORK?

Employers must notify and agree with affected employees in writing that they are to be furloughed.

Employers should take appropriate legal advice due to the change in status of the staff, which may require appropriate consultation and referral to collective bargaining agreements etc. as underpinned by the usual employment legislation requirements. Any consultation will need to take place before decisions regarding furloughing are made.

Making a claim for CJRS grants will require employers to run the payroll as usual, for the pay they are proposing to pay the employees. If the employer chooses to “top up” the pay to 100% and fund this themselves, then they need to process the full 100% through the payroll. If they choose to pay 80%, then it is the 80% which needs to be processed.

The FPS should then be submitted through the Real Time Information system, and employers will then need to prepare the figures needed together with the relevant details required by HMRC (see below) to make their claim for furlough assistance under the CJRS portal.

WHEN DOES THE PORTAL GO LIVE?

The portal went live at 8am on 20 April 2020.

To make a claim, all employers undertaking this work themselves need the following to have been put in place before they can make a claim:

• A Government Gateway (GG) ID and password – the employer can apply for one online by going to GOV.UK and searching for ‘HMRC services: sign in or register’
• Be enrolled for PAYE online – employers can enrol by going to GOV.UK and searching for ‘PAYE Online for employers’

Agents who are authorised (see “Does the employer or the agent make the claim” below) to act for employers can make the claim on behalf of the employer using their Agent ID and password for PAYE online services.

The employer needs to inform the agent which UK bank account it wants its grant to be paid into so as to receive funds quickly. HMRC has said that the funds will be paid into the account no more than 6 working days after the application has been submitted.

Employers and agents should retain all records and calculations in respect of any claims.

The guidance now also contains a calculator to assist employers and agents.

Guidance on GOV.UK is being regularly updated - so please review it frequently.
Employers and agents will require the following information to use the portal:

- The employer PAYE reference number
- The number of employees being furloughed
- National Insurance Numbers for the employees being furloughed
- Names of the employees being furloughed
- Payroll/works number for the employees being furloughed
- The Self-Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number
- The claim period (start and end date)
- Amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
- The employer’s bank account number and sort code
- A contact name
- A contact telephone number

**Unincorporated Charities**

Unincorporated charities should enter their Employer Name, and leave the CT elements blank.

As set out in the guidance, to claim:

The charity must provide either:

- its name (the employer’s name if an agent is completing the application)
- the Corporation Tax unique taxpayer reference (CT UTR)
- the Self-Assessment unique taxpayer reference (SA UTR)
- the company registration number CRN)

Where an unincorporated charity doesn’t have a CT UTR, a SA UTR or a CRN, it should only provide the first thing on that list.

**If they have neither UTR nor a CRN, the charity should enter “NO” in the box, at which point they will be asked for the name of the employer.**

**Over 100 employees, or 99 or fewer?**

- The current process for using the portal depends on whether the employer has less than 99 or 100+ employees on the payroll.
- If the employer has 99 or less, the individual details need to be input manually into the portal on the application. As far as HMRC is aware, the individual details must be physically typed in, not copied and pasted, although we understand the old controls Ctrl + C & Ctrl + V may be capable of being used.
- If the employer has 100+ employees on the payroll, they will be asked to upload a file – there are 4 file formats to choose from - .xls .xlsx .csv .ods.
- Every time a claim is made, the details need to be put in from scratch, even if they have not changed at all from submission to submission.

ICAS has objected to this and asked for it to be changed as the system should be the same for all employers regardless of size. Further details are awaited.

**DOES THE EMPLOYER, OR THE AGENT MAKE THE CLAIM?**

HMRC realises there is a lot of confusion about the term “agents” – and who is authorised to do what, exactly.

Where an agent has appropriate authorisation, they can submit a claim on behalf of an employer client. Note that the Agent Services Account “client registration as a delegate” facility cannot be used to make claims as this does not cater for PAYE matters.

Merely possessing agent authorisation by way of a 64-8 is something of a red herring.
What is required is full digital authorisation under the Online Agent Authorisation (OAA) process, which requires a code to be sent to the client via Govt Gateway and this is passed by the client to the agent to complete the process.

HMRC has stated that only agents who carry out AML procedures are entitled to be authorised – so if a firm of accountants does nothing but file payroll returns for a client, but does not give tax advice or carry out an audit, for example, it will not have gone through AML and does not have authority to claim CJRS assistance through the portal.

Note that:

- Agents who have permission to collect HMRC data on tax code changes and student loan changes are not authorised by virtue of this alone to submit claims for clients.
- There will be many instances where neither the client (because they don’t have enough details about the payroll or the submissions, or the GGID & password and PAYE online enrolment) nor the agent (because they don’t do AML or have Govt Gateway digital authorisation so can’t see the dashboard) can claim assistance.
- There may be a lot of confusion amongst clients in that they think they have authorised their agent to do this work already when in fact they haven’t – because there are 2 levels of authorisation.
- If an agent doesn’t have authorisation, they need to communicate this now to clients. The PAYE enrolment process for employers can be speeded up, but the authorisation process cannot.

HMRC published this on 20 April:

“Am I authorised to complete CJRS claim for my client?

Agents who are authorised to act on behalf of clients for PAYE matters online will be able to make the claims. That means that they:
- are registered as an agent with HMRC and have an PAYE Agent code
- have enrolled for PAYE online Service for Agents
- have been authorised to act online for their client in PAYE. This could be via an existing FBI2 form or the Online Agent Authorisation process.

If an agent is unsure of the level of authorisation they have, they should check the list of payroll clients in their agent portal. If the client is listed as ‘Confirmed’ they can make a CJRS applications on their client’s behalf. However, if they are not listed, or listed as ‘limited authorisation’ then the agent cannot currently claim on behalf of the client.

How can an agent who is not currently authorised online become authorised?

If an agent is registered with HMRC, but has not been authorised to act online for their clients in PAYE, they can seek authorisation to be able to act for the client.

Rather than using paper form FBI2 or the online agent authorisation process, agents can ask their clients to authorise them to act for PAYE through the client’s Business Tax Account. This is a faster route to ensure the right permissions are in place.

Prior steps required:
- The client will need to have enrolled for PAYE online for employers (activation codes have now been temporarily suspended so this is instantaneous).
- The agent must also be enrolled for PAYE online services for Agents
- The agent needs to give their Agent Government Gateway ID to the client.

Steps for client to authorise agent
- The client signs into HMRC online services (their Business Tax Account).
- In BTA, select “Manage Account” and select the “Add, view or change tax agent” option under the heading Tax Agents.
- Select “PAYE for employers” and click continue.
- On the “Manage who can access your taxes and schemes” page, click the “Add an agent” link next to the service that you want to assign an agent for (e.g. PAYE).
- Enter your Agents Government Gateway ID provided to you by your agent and click continue.
• Click on “Add Agent” to confirm you want to add the selected agent.
• You will receive confirmation the agent has been added on the screen.

Putting in place this authorisation will enable an agent to act for the client in all PAYE matters online, not just for this scheme. So if this authorisation is intended to be specific to the CJRS claim, you should advise your client to remove the agent access via the BTA once the claim is made.

HMRC is looking at ways to make third party authorisations simpler and will aim to publish further guidance on this on Tuesday [21 April].”

**TIME LIMITS FOR MAKING CLAIMS**

There is currently no time limit for making claims, although we expect that one will be set once business life can return to normal.

**TIME TO PAY ARRANGEMENTS**

Employers may need to enter into Time to Pay arrangements relating to PAYE and NICS, and should contact HMRC as soon as possible about this. VAT deferral is in place as well as deferral of the Self-Assessment deadline on 31 July – although businesses who can afford not to defer are being encouraged to carry on as usual and pay on time.

**BUSINESSES IN ADMINISTRATION**

On 15 April, the decision in a [High Court Case](https://www.gov.uk/guidance/cl) dealt with how the scheme permits administrators to pay furloughed employees within the constraints of insolvency legislation.

The Administrator has 14-day window to decide whether to retain or dismiss the employees, or else is deemed to have “adopted” the employment contracts.

The outcome determines what leverage the employees have to make a claim for wages, and who will pay that claim. The High Court decision offered some clarity in that Administrators can place employees on furlough where they can demonstrate that there is a reasonable likelihood the jobs will be saved in the long term. The furlough payments then take priority over other debts.

**USEFUL LINKS/FURTHER READING**

**Employer Guidance:**


**Employee Guidance**