

As you will have seen yesterday, the government is now:

- Extending the Coronavirus Job Retention Scheme (CJRS) until 31 March 2021.
- Postponing the Job Support Scheme (JSS), possibly indefinitely.
- Scrapping the Job Retention Bonus (JRB), but this will apparently be replaced by another “*retention incentive at the appropriate time*”.

Businesses that have spent the last few weeks preparing for the end of furlough, possibly bringing staff back to work, telling them all about the JSS or putting in place short-time working agreements, let alone banking on the JRB for a cash boost when most needed, are entitled to feel more than slightly irked at this new and unheralded change in approach by the government.

But, like most employers, they will also probably welcome this additional financial support for ongoing wage costs at a time when the economic forecast is looking increasingly grim. The good news at least is that the extended CJRS is not only more generous for employees but also less expensive for employers than the JSS it is replacing.

Most employers likely to use it are also familiar with the workings of the CJRS, insofar as anyone can be said to understand it fully, so this should hopefully make the whole process (slightly!) less painful.

Take a look at our “quick guide” below for a snapshot of how the extended scheme will work.



CJRS Extension

What is happening to the CJRS?	<p>As the Chancellor explained in his speech in the House of Commons yesterday, the economic effects of the pandemic are proving much longer-lasting than originally anticipated and the government has decided to extend the CJRS to give businesses greater certainty and protect more jobs over what is clearly going to be a very difficult winter.</p> <p>The good news is that as this is an extension to the previous scheme, the rules will remain broadly the same, with a limited number of exceptions as highlighted below.</p> <p>It remains a UK-wide Scheme, so not restricted to particular sectors, regions or even individual nations within the UK. It will also be open to eligible employers even if they have not previously furloughed staff.</p>
When does support start?	<p>Support under the CJRS Extension will be available from 1 November and will run until 31 March next year.</p> <p>The government will review the scheme in January so there may be changes to it at that time, most likely in the form of increases to the level of employer contributions if the economy is doing well enough to ask employers to contribute more.</p>
Which employers are eligible to use the CJRS Extension?	<p>As highlighted above, employers will be able to use the extended scheme even if they did not use the CJRS previously. All employers should therefore consider whether it is appropriate to make use of the CJRS Extension in light of the ongoing economic impact of the pandemic and their greater understanding and experience of how it is affecting their business.</p> <p>Employers will be able to use the scheme whether their businesses remain open or are required to close under national or local restrictions. There will also be no financial impact test for larger employers, as was going to be the case under the JSS Open. Despite that and the formal deferral of the JSS and its related guidance, we consider that there will still be eyebrows raised within HMRC if CJRS Extension support is claimed by employers which at the same time pay material dividends to shareholders or discretionary bonuses to senior staff. The Court of Public Opinion will also still be very much in session on this, and as if to assist the jurors there, HMRC intends to publish the names of employers that use the CJRS Extension, starting from December.</p> <p>Fully publicly-funded organisations will not be expected to use the scheme, but partially-funded organisations will be eligible “<i>where their private revenues have been disrupted</i>” (whatever that means – we doubt that it will entail any particularly high burden of proof as that would run counter to the generosity/evident desperation of the rest of the extension).</p>
Can employers make capital distributions under the CJRS Extension?	<p>The policy paper does not deal with this point so on the face of it employers can in principle make capital distributions (e.g. dividends) while claiming the grant. This may be something that is dealt with in the detailed guidance that is due out next week. As set out above, even if they can technically do so without losing eligibility, there remains the question of whether that is a good idea from a PR perspective.</p>

Which employees can we claim for under the CJRS Extension?

Eligible employers will be able to claim for “employees who were employed and on their PAYE payroll on 30 October 2020.” The employer must have made a PAYE Real Time Information submission to HMRC between 20 March and 30 October, notifying a payment of earnings for those employees.

As was the case under the previous CJRS rules, staff on any type of contract are eligible, including those on variable or zero hours contracts and agency workers, provided they are paid through PAYE.

Crucially, employees do not need to have been furloughed under the CJRS previously – so no requirement this time about being furloughed for at least three weeks by the end of June 2020.

Employers will be able to re-hire staff who recently left the business- employees who were on the payroll on 23 September 2020 but were made redundant or stopped working for their employer after that date can be re-employed and claimed for under the CJRS Extension. In order to do this, employers must have made a PAYE Real Time Information submission to HMRC for them from 20 March to 23 September 2020, notifying a payment of earnings for these employees. Similar provisions apply to employees on fixed-term contracts that expired after 23 September.

In the same way that the government allowed employers to re-hire staff back in March when the CJRS was first introduced, this provision seems designed to catch those employees who were dismissed at a time when their employer did not think it would receive any financial support for them and to encourage such employers to re-hire them. We know that some businesses are considering doing this, but we would advise caution. Things to think about first include: what type of contract will you engage them on (a fixed-term contract would probably be best, though it would be a brave employer these days that would set a fixed date for the CJRS to end), what happens to any redundancy payments that have already been paid (you are probably not going to be able to recover these unless you are able to agree otherwise with the employee), how much is it going to cost you to re-hire them (remember you will need to pay employer national insurance contributions and employer pension contributions on any unworked hours, and accrued holiday). On the flip side, if the employment has already ended there is no requirement that the re-hire must be with unbroken continuity of employment or on the same terms as before. We would recommend that employers take advice before re-hiring staff.

How will the CJRS Extension work?

As set out above, the CJRS Extension will work in broadly the same way as the previous CJRS scheme. Employers will be able to furlough staff on either a full-time or part-time basis and they will be able to vary the hours worked in agreement with affected employees.

There will be no minimum hours threshold (the “viable jobs” minimum 20% has disappeared along with the JSS) and on the face of it no cap on the number of employees who can be furloughed.

The government will then pay 80% of wages for hours not worked, up to a maximum of £2,500 per month for no hours worked at all. The £2,500 cap is reduced proportionately to the number of unworked hours. Employer contributions during the CJRS Extension until at least January 2021 will mirror those as in August 2020, i.e. employers will be required to cover National Insurance contributions and employer pension contributions for unworked hours. Sadly, it does not appear that the government has taken advantage of the opportunity to scrap some of the ludicrously complicated maths behind the assessment of contributions under the [Flexible Furlough Scheme](#) so employers maintaining staff on such arrangements will need to keep a careful eye on hours worked in order to have proof in any later HMRC audits.

The government will review the scheme in January and it may be that from that point employers will be required to increase the size of their contribution to include some percentage of the wages for unworked hours.

Employers will have to pay employees for any hours worked as normal, as well as employer National Insurance contributions and employer pension contributions for those hours.

<p>Can employers “top up” wages and still claim under the CJRS Extension?</p>	<p>Yes, employers can top up employee wages above the maximum salary contribution threshold at their own expense.</p>
<p>What should employers include in the calculation of wages?</p>	<p>The policy paper says that for employees who were eligible under the original CJRS, whether or not actually furloughed, employers must use the same calculations for calculating reference pay and usual hours as under the previous CJRS.</p> <p>For employees who meet the eligibility criteria for the CJRS Extension but were not previously eligible for the original CJRS (joiners after March, for example), employers must use the alternative calculations set out in the policy paper. For example, the reference pay for such employees on a fixed salary will be 80% of the wages payable in the last pay period ending on or before 30 October. For those whose pay varies it will be 80% of the average pay between the start date of their employment or 6 April 2020 (whichever is later) and the day before their CJRS Extension furlough period begins.</p> <p>Full details of the calculations will apparently be shared in the fuller guidance due to be issued on 10 November 2020, we must assume quite late in the day.</p>
<p>What is the position regarding holidays?</p>	<p>The policy paper simply says that employees retain their rights at work, including annual leave. The position should therefore be the same as under the previous CJRS rules, i.e. that employees will continue to accrue at least statutory annual leave while on furlough and any holiday pay will have to be calculated based on usual earnings. That means that the employee must receive 100% of their usual pay of which the government will contribute its 80%, subject to the cap. We assume that employers will continue to be able to claim the CJRS grant for holiday taken by employees on the extended scheme. On that note, employees who have been on furlough for a long period of time may be accruing a significant amount of paid holiday; employers should be aware of this and consider requiring employees to take leave during furlough to mitigate that build-up and avoid significant absences after Q1 next year and/or accrued holiday pay liabilities on termination.</p>
<p>Are employers required to obtain the consent of employees to be eligible for the grant?</p>	<p>Yes. To be eligible for the grant, employers will have to “agree” any new furlough arrangements with affected staff (or unions).</p>
<p>Do we need to have written agreements in place with affected employees?</p>	<p>The policy paper says that to be eligible for the grant, “<i>employers must have confirmed to their employee (or reached collective agreement with a trade union) in writing that they have been furloughed or flexibly furloughed.</i>” Employees do not have to provide a written response.</p> <p>Employers will be able to confirm these arrangements retrospectively, to reflect the fact the scheme applies from 1 November but employers have only just been told about it.</p> <p>Important bit: If you are intending to treat an employee as on furlough from 1 November, you must confirm this in writing to them by 13 November, as the policy paper says that any agreements made retrospectively will only be valid for the purposes of a CJRS claim if they are made according to the conditions referred to above and are in place by 13 November.</p> <p>In terms of what the agreements should contain, the policy paper says rather vaguely that the terms of any agreement must “<i>reflect the hours the employee has actually worked or not worked over the period of the agreement</i>” and “<i>allow the employer to satisfy the terms of CJRS so they can make a claim in relation to hours not worked.</i>” We think this probably means the agreement should include details of working hours (to the extent this is possible), that the employee should not do any work while on furlough, etc. In other words, similar information to previous furlough letters. If hours change during the currency of the extended flexible furlough, employers should provide written confirmation of this to the employee and keep a copy so that it can be matched up with the corresponding alterations in the furlough support levels claimed.</p>

<p>What is the position with regard to training/ volunteering, working for other employers?</p>	<p>As with the previous CJRS rules, employees will be able to take part in training or volunteering while on furlough. They can also work for other employers if contractually allowed to do so.</p> <p>Employees must not do any work for their employer during the hours they are recorded as being on furlough and are claimed for accordingly. Even where employees have been told in terms by the employer that they must not work over periods being claimed for, arrangements can still come unstuck where individual line managers seek to push their luck and get a little more out of their staff than they should. We have seen a number of allegations made by disgruntled employees made redundant in recent weeks as the government schemes were due to unravel that they had been made to work while officially furloughed. The furlough whistleblowing hotline will no doubt remain in operation until this extension to the CJRS ends, so it is just not worth an employer's while taking liberties around the edges of this.</p>
<p>What happens to employees who are due to go on family leave at some point, e.g. maternity leave?</p>	<p>As with the original CJRS, the government will presumably introduce legislation to ensure that parents who are due to go on maternity, paternity, adoption leave, etc., will not lose out on their entitlement to SMP, SPP, SAP, etc. as a result of being furloughed during the relevant assessment period.</p> <p>Note that under the CJRS Extension, employees who have caring responsibilities resulting from coronavirus, including those who need to look after children, can be furloughed.</p>
<p>What happens to employees who are sick or required to shield under the new restrictions?</p>	<p>As with the previous CJRS scheme, it seems that employees can be furloughed where they are unable to work anyway because they are shielding in line with public health guidance or need to stay at home with someone who is shielding. Again, if an employee is off sick, especially long term, they may also be furloughed if their employer wants to do so for business reasons.</p> <p>In terms of shielding, the government has this week also updated its guidance on this issue. See link here to latest guidance.</p>
<p>Can employers rotate employees on and off furlough?</p>	<p>Yes, it would appear so. There is no minimum furlough period. Hold on for the guidance if in doubt.</p>
<p>Can we make employees redundant if we are using the CJRS Extension?</p>	<p>The policy paper does not deal with this situation. If the previous CJRS rules continue to apply, and contrary to what the JSS provided, employers should still be able to give notice of redundancy and claim for salary paid during the notice period (but not PILON payments or statutory or enhanced redundancy payments). On that note, the policy paper does say that the scheme rules will remain the same "except where we say otherwise" – and there is nothing to say otherwise! However, to be sure, employers should wait for the more detailed guidance that is due out next week. Where notice is given by the employer for any other reason or by the employee it seems that the same will apply- employers can claim for notice periods worked (probably including garden leave since the employment is still live) but not for payments made in lieu.</p>
<p>What about employees who transfer under TUPE?</p>	<p>The policy paper does not deal with employees who transfer under TUPE, but presumably this will be dealt with in the detailed guidance that is due out next week or in the Treasury Direction that should follow at some stage. We assume that such employees will also be eligible to be furloughed, subject to meeting the eligibility criteria.</p>
<p>What records should employers keep?</p>	<p>Employers must keep a written record of any agreements with employees for at least five years.</p> <p>It is also crucial they keep records of how many hours employees work and the number of hours they are furloughed and of any variations in each. These must be retained for six years.</p>

<p>How do employers make a claim under the CJRS Extension?</p>	<p>Employers will be able to make a claim online (from 8am apparently!) on Wednesday 11 November.</p> <p>As was the case previously, employers must report and claim for a minimum period of seven consecutive calendar days and the claim period must start and end within the same calendar month. Claim periods cannot overlap.</p> <p>Claims relating to November must be made by 14 December. Claims relating to each subsequent month should be submitted within 14 days of the following month. This is quite a tight timescale so employers should ensure these deadlines are met.</p> <p>Do not forget that the closing date for claims up to and including 31 October is still 30 November 2020, using the previous CJRS guidance.</p>
<p>What is the inter-relationship with other Coronavirus Job Schemes?</p>	<p>As indicated above, the launch of the JSS has been postponed because of the changing position related to the pandemic, so employers do not need to concern themselves with this, for now at least.</p> <p>The Job Retention Bonus is also no longer going to be paid in February 2021, in light of the extension of the CJRS. Another “<i>retention incentive</i>” will however apparently be “<i>deployed at the appropriate time</i>”, so against the caveat that it is unwise at present to forecast <i>anything</i> in terms of the shape of State support, expect something similar to resurface in February or March for those previously furloughed staff who are still on the books at the end of June or thereabouts.</p>
<p>Where can employers find further information about the CJRS Extension?</p>	<p>Link to press release here.</p> <p>Link to policy paper here.</p> <p>Link to economic factsheet here.</p> <p>Full guidance will apparently be published on 10 November.</p>

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