

From Howard Beckett

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The Coronavirus Job Retention Scheme (“CJRS”) Extended

On 31 October 2020 the Prime Minister announced that the CJRS/Furlough Scheme was being extended by a month to coincide with the National Lockdown in England. The Government confirmed the following day (on 1 November 2020) that the Job Support Scheme (JSS) due to take effect that day, had been withdrawn. The Q&A we issued on 30 October regarding the JSS should therefore be disregarded.

On 5 November 2020 the Chancellor announced that the CJRS would now be extended from 1 November 2020 until 31 March 2021 and a policy paper setting out some much needed detail regarding this has now been published, with full guidance on 10 November 2020.

As with the proposed JSS improvements, this comes too late for many of our members made redundant unnecessarily and, again, the extension to the CJRS allows employers to re-engage those who were made redundant after the 23 September (see below). The changes do however offer an improved prospect of negotiated deals for those still in employment.

The answers below summarise the information released to-date regarding the CJRS extension, updates further to our last briefing/the 10 November full guidance are highlighted yellow for ease.

Please also refer to our previous guidance for general queries including holiday entitlement and pay, concerns over health and safety, negotiating collective furlough agreements and other related issues.

1. Who is eligible for the Coronavirus Job Retention Scheme Extended?

Members who were on the employer’s payroll by 30 October 2020. The employer is required to have made a PAYE (Real Time Information (“RTI”)) submission to HMRC for the member between 20 March 2020 and 30 October 2020.

Members do not need to have been furloughed previously to be eligible for the extended CJRS.

As with the previous CJRS, the extended scheme applies to anyone that is paid by PAYE on all contract types (full time, part time, Agency, Zero hour contracts, those paid via umbrella companies etc.).

Again members who are advised to shield (or who need to stay home with someone that is shielding) and those who have caring responsibilities resulting from CV-19 (including looking after children) can be furloughed.

Fully publically funded bodies are again not expected to use the extended scheme, but those that receive partial funding and have lost revenue can apply.

2. What if Members have been dismissed already?

Any members made redundant after 23 September 2020 can be re-employed and placed on furlough under the extended scheme, where an RTI submission was made for them to HMRC between 20 March and 23 September 2020. **Note answers to Q12 and 13 below also.**

The previous Legal Q&A compilation includes a template letter that can be adapted to seek re-instatement of members dismissed prior to the CJRS extension announcement and/or raise on appeal. **If using the template, the sentence referring to the scheme being backdated to 1 March 2020 should be replaced with the following or similar: "The extended furlough scheme is being backdated to include employees dismissed after 23 September."**

3. Does the extended CJRS allow short-time working and/or full furlough?

Yes it operates like flexible furlough has since 1 July. Unlike the proposed JSS replacement, it does not distinguish between open and closed businesses and does not require any minimum hours to be worked, so members can be furloughed for all hours or work reduced hours.

4. Does the 3 week minimum furlough period apply?

No there is no minimum period.

5. What should members be paid and what funding do employers receive?

For the period 1 November 2020 until 31 January 2021, this is calculated using the same methodology as applied in August 2020:-

- All hours worked should be paid at normal pay (funded by the employer).

- For usual hours not worked, HMRC will provide funding of 80% of normal wages (with a £2500 month cap, pro-rated for flexi furlough).
- Employers will need to pay employer NI and pension contributions on furlough funding and working hours' pay.
- Employers remain able to top-up pay and should be pushed to do so.

The Government funding rates will be reviewed in January 2021.

6. How is "Normal Pay" calculated?

A. Members previously furloughed

For members furloughed under the CJRS previously, the employer must use the same calculations for pay as they did with previous claims.

B. Members eligible for, but not previously furloughed

For members who were eligible to be furloughed under the previous CJRS (on the payroll by 19 March 2020), but were not furloughed, the original CJRS calculations for pay apply:-

- 80% fixed pay is based on the rate paid in the last pay period prior to 19 March 2020.
- 80% variable pay is calculated as the greater of the 2019/20 tax year average or the corresponding 2019/20 calendar period including overtime and other variable pay, excluding only discretionary payments.

C. Members not eligible for previous CJRS (new starters added to payroll between 19 March – 30 October 2020)

New starters' normal pay is calculated for members:-

- on a fixed salary, at 80% of the wages payable in the last pay period ending on/before 30 October 2020.
- whose pay varies, at 80% of the average paid between 6 April 2020 (or their start date if later) and the day before their furlough begins

7. How are "Usual Hours" calculated?

A. Members previously furloughed; or

B. Members who were eligible for but not furloughed under the previous CJRS (on the payroll by 19 March 2020)

For those flexibly furloughed (working reduced hours), usual hours are calculated the same as they were or would have been under the CJRS:-

Fixed hours

A member will be deemed to have fixed hours if they are contracted for a fixed number of hours **and** their pay does not vary according to the number of hours they work.

The usual hours for a member with fixed hours is the hours they were contracted for at the end of the last full pay period ending on or before 19 March 2020.

Variable hours

A member will be deemed to have variable hours if **either** they are not contracted to a fixed number of hours **or** their pay depends on the number of hours they work (i.e. they work overtime).

The usual hours for a member whose number of hours varies and/or whose pay depends on the number of hours they work, the number of usual hours is calculated based on the higher of:

- the number of hours worked in the same calendar period in the 2019/20 tax year;
- the average number of hours worked in the 2019/20 tax year

C. Members not eligible for previous CJRS (new starters added to payroll between 19 March – 30 October 2020)

New starters' usual hours for flexible furlough are calculated for members:-

- on fixed hours (those contracted for a fixed number of hours **and** pay does not vary according to the number of hours they work), at the contracted hours worked in the last pay period pay by 30 October 2020;
- on variable hours (those either not contracted to a fixed number of hours **or** their pay depends on the number of hours they work), at the average hours worked between 6 April 2020 and the day before their furlough periods begins.

8. Does the JSS and/or Job Retention Bonus still apply?

No – for now both initiatives have been put on hold.

9. What are the extended CJRS time frames?

The extended CJRS opens on 1 November 2020 and runs for 5 months, until 31 March 2021. Full Government/HMRC guidance will be provided by 10 November 2020 on making claims.

The scheme funding will be reviewed by the Government in January 2021.

10. Do employers have to use the extended CJRS?

No – as previous, this is a decision for the employer and so too is who they furlough/how flexibility rotas are operated.

11. Does an employer have to agree the extended CJRS with the union or member?

Yes – to be eligible for funding, employers must have reached a written agreement with their employee or a written collective agreement with the trade union(s) where the relevant terms (hours and pay) are determined by collective agreement.

12. Can furlough be agreed retrospectively to qualify for the CJRS?

Yes - Extended furlough (including flexible furlough) can be retrospectively agreed to take effect from 1 November 2020 but any retrospective agreement needs to be **entered into by Friday 13 November 2020** to be able to claim retrospective state funding. Any later agreements would take effect from the date they were entered into for CJRS funding purposes.

13. Can employers dismiss members whilst claiming CJRS funding for members' notice periods?

They can during November 2020, but this is being reviewed and will change from 1 December 2020 – further Government guidance is promised by the end of November.

Either way, notice pay for the statutory minimum notice periods must be paid at non-furlough reduced rates using the usual week's pay formula.

This change may unfortunately deter some employers from re-employing members made redundant after 23 September 2020 where their notice has already been served/paid. If applicable and helpful in negotiating re-employment of members, agreeing a break of a complete week (ending in a Saturday) or more will break continuity of employment – i.e. members made redundant on 31 October 2020 and paid notice and redundancy pay, could be re-employed with effect from 8 November 2020 and claimed for under the scheme with a continuous employment start date of 8 November 2020, thus limiting reluctant employers' additional liabilities to a week's notice.

Any more complicated employer proposals regarding re-instatement and off-setting payments etc. should be referred to the legal department for consideration.



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