



## **CORONAVIRUS (COVID-19) JOB RETENTION SCHEME (CJRS) [FURTHER EXTENSION TO 31<sup>ST</sup> MARCH 2021]**

### **BACKGROUND**

Although it was a last minute decision to extend the CJRS 'furlough' scheme, rather than implement the **new** Job Support Scheme (JSS), given the CJRS scheme's financial importance to businesses (and it's familiarity since April 2020), it was good news to see the scheme being extended !

Due to the scheme's success in allowing Employers:

- to retain their employees as much as possible in their employment, as well as
- financially support 'hard pressed' businesses

the Government announced that the CJRS 'furlough' scheme **has been extended through to 31<sup>st</sup> March 2021.**

In simple terms, the extension of the CJRS 'furlough' scheme, means that

1. Employers will receive increased grants of up to 80% of each '**eligible**' employee's '**usual**' salary for any hours that **are not worked - up to a max. of £2,500 per employee per month**
2. Employers can operate both "full" and "flexible" 'furlough' options for each eligible employee - **meaning 'furloughed' staff can still work part time or not work at all**

However as you may already be aware, the extension of the CJRS means the withdrawal of the Job Support Scheme (JSS) - which was due to take effect from 1st November 2020, along with the cancellation of the Job Retention Bonus (JRB) in January 2021.

Initial claims under the extended CJRS scheme can be made from 11<sup>th</sup> November 2020 onwards, and there is likely to be a review of the terms of the CJRS scheme in January 2021 !

### **WHAT HAS CHANGED IN THE MARCH 2021 EXTENSION OF THE CJRS SCHEME ?**

The CJRS scheme in terms of the eligibility and key rules/requirements etc., has remained broadly similar to how the scheme operated up until 31<sup>st</sup> October 2020, however some further restrictions on the use of the CJRS scheme have now been implemented in the extension from November 2020.

Therefore from **November 2020**, the changes include the following:

- Employers can now include '**new**' employees on CJRS 'furlough' scheme claims
- Employers can include employees on the CJRS 'furlough' scheme who are '**shielding**' or have '**care commitments**'
- Employers can include an employee on the CJRS scheme as a 're-hire', that has been made redundant **postthe 23rd September 2020** (including any fixed term employees)
- Employers **do not appear to be able** to include any Employees who are serving their **Notice Period** (ahead of redundancy) in a claim under the extended CJRS 'furlough' scheme
- Employees who are on **Maternity Leave** will not be able to return early and be included in a claim under the CJRS 'furlough' scheme i.e. such employees need to provide at least eight weeks' notice of their intention to do this, and can only be placed 'on furlough' at that point
- Employees who take **Annual leave** (while furloughed) **must be paid in full** for this time
- Employers will no longer be able to obtain a bonus for retaining Employees under the **Job Retention Bonus (JRB)** i.e. the JRB scheme has been withdrawn/cancelled.

## KEY ISSUES AND ELIGIBILITY

- **Employer Eligibility:** All employers with a UK bank account and with a UK Employers PAYE schemes can use the CJRS scheme to claim the grant, whether their business is open or closed.
  - **Employer flexibility i.e. 'flexible' furlough:** Employers have flexibility to use the CJRS scheme for employees for any amount of time and shift pattern (or to include employees 'on furlough' full-time).
  - Employees can also be rotated 'on' and 'off' 'furlough' as and when necessary.
  - **Employer costs and contributions:** under the extended CJRS scheme, there is **NO** Employer contribution to employee's wages required for hours 'not worked' i.e. Employers will only be asked to cover **NI and pension contributions** for hours 'not worked' **AND** full payment of any hours 'actually worked' (under 'flexible' furlough)
  - **'Flexible' furlough :** Where an employee is on 'flexible' furlough, the Employer will pay in full for the hours worked, and a claim under the CJRS scheme can be made for 80% of pay for the unworked hours only, subject to a cap.
  - **Grant funds:** The extended CJRS scheme will now operate as per the original scheme i.e. Employers are able to submit a claim under the CJRS scheme shortly before, during or after running payroll.
  - **Claim Submission deadlines:** Where Employers make a claim under the CJRS scheme for November 2020, then this **MUST** be submitted to HMRC by no later than **14 December 2020**. Similarly claims relating to each subsequent month should be submitted by **day 14 of the following month**
  - **Employee eligibility (General):** Neither the Employer themselves **NOR** the employee, needs to have previously made a claim under the original CJRS scheme, in order to be eligible under the extended CJRS scheme (including directors)
  - **Employee eligibility (General):** Employers can make a claim for any employees who were employed and on their PAYE payroll on 30th October 2020 i.e. a PAYE Real Time Information (RTI) submission must have been made to HMRC between 20th March 2020 and 30th October 2020
  - **Employee eligibility (Re hires or Re employed):** Where any employees that were employed/on the payroll on 23rd September 2020, but who were made redundant or stopped working afterwards, can now be re-employed and claimed for under the extended CJRS scheme i.e. an RTI submission must have been made to HMRC between 20th March 2020 to 23rd September 2020
  - **Claim Periods :** Claim periods must start and end within the same calendar month, with a minimum period that lasts at least seven days.
  - Periods of fewer than 7 days can be claimed for if they are what HMRC call an "orphan period" i.e. a period of no more than six consecutive days that either begins on the first day of a CJRS extension calendar month, or ends on the last day of a JRS extension calendar month.
- Please note** – Employers can only make one claim for any period
- **Employee Sickness :** Employers are eligible to make a claim under the CJRS scheme and the SSP rebate scheme for the same employee, **BUT NOT** for the same period of time.
  - **Other :** HMRC will publish details of employers who make claims from December 2020 onwards under the terms of the extended CJRS scheme



## OTHER ISSUES

### HR/Employment law Issues

The use of the CJRS scheme (and/or the extension to the original CJRS scheme), do not remove any of the normal HR issues or regulations that are applicable to Employers when managing their employees.

Employers should always seek separate specialist HR advice to ensure that all relevant issues are taken into account and deal with appropriately, however some key issues to be aware of include the following:

1. Employers must be careful not to discriminate when deciding which employees to offer 'furlough' to
2. Employers need to agree the pay reduction, that forms part of the CJRS scheme process, with employees as part of the agreement for inclusion 'on furlough' i.e. normal employment law principles apply
3. Employers will need to review and/or update any documentation or agreements with employees that may have been 'on furlough' under the original CJRS scheme i.e. consider whether a new agreement (or letter) may be necessary to cover the period from 1 November 2020 onwards

### Shielding/carers/sickness

Employees can be furloughed where they are unable to work because they:

- are shielding in line with public health guidance (***or need to stay at home with someone who is shielding***)
- have caring responsibilities resulting from coronavirus, including employees that need to look after children.

As per the terms of the original CJRS scheme, it is up to the Employer to decide whether to move employees who are on sick leave onto Statutory Sick Pay (SSP) rates or to keep them 'on furlough'

### Foreign nationals

Employers are able to put 'foreign national' employees onto the CJRS scheme

### TUPE and Related Issues

An Employer is eligible under the CJRS scheme in respect of employees transferred if the TUPE or PAYE business succession rules apply to the change in ownership.

The employees being claimed for should have been:

- transferred from their old employer to their new employer **on or after 1 September 2020**
- employed by either their old employer or new employer **on 30 October 2020**
- on a PAYE Real Time Information (RTI) submission to HMRC, by their old or new employer between 20th March 2020 and 30th October 2020 (notifying a payment of earnings for that employee).



### **Employees with more than one employer**

If your employee has more than one employer, they can be furloughed for each job.

### **Flexible 'Furlough'**

Where an employee is flexibly furloughed and then takes annual leave, the hours of annual leave should be counted as 'furloughed' hours and not working hours. This means that the employer may include these hours in their claim to the Scheme - **but must top up pay to 100% because annual leave during furlough must be paid at normal pay.**

### **Annual Leave**

Government guidance allows an Employer to require an employee to take annual leave when 'on furlough', however the Employer must also be aware if such leave means the employee will be unable to benefit from such leave i.e. **'resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday'**.