

ROADMAP OUT OF LOCKDOWN

The extended Coronavirus
Job Retention Scheme 2021



Introduction

The government has confirmed that the Coronavirus Job Retention Scheme (the “CJRS” or “furlough scheme”) will remain in place until 30 September 2021, and has published updated guidance setting out the rules which will apply for the remaining months of the scheme.

Key points from the updated guidance are that:

- **The CJRS has been extended until 30 September 2021.** However, the amount of government contribution towards furloughed employee’s wages will be reduced in the last few months of the scheme, and employers will have to increase their contribution to make up the difference.
- **Until 30 June 2021 the level of government grant available to employers under the scheme will remain at the pre-existing level.** That is, a contribution of up to 80% of furloughed employees’ wages, up to a cap of £2,500 per month, for the time they spend on furlough. Employers can continue to choose to top up furloughed employees’ wages above the 80% total and £2,500 cap for the hours not worked, at their own expense.
- **From 1 July 2021 the level of government grant will begin to taper down,** and employers will be required to contribute an increasing percentage of the cost of their furloughed employees’ wages. To continue to be eligible for the grant, employers must continue to pay their furloughed employees at least 80% of their wages, up to a cap of £2,500 per month.

The government contribution to furlough pay will reduce as follows:

- **From 1 July 2021**, to 70% (up to a cap of £2,187.50) per month, with employers having to contribute the remaining 10% (up to £312.50) per month.
- **From 1 August 2021** (until the end of the scheme on 30 September 2021), to 60% (up to a cap of £1,875) per month, with employers having to contribute the remaining 20% (up to a cap of £625) per month.
- **Employers will remain liable for payment of National Insurance contributions and pension costs incurred on the full value furlough pay.**

In addition to the above, there have been some slight changes to the eligibility requirements for, and rules of, the scheme; though much remains the same. We explore some of the key points in this guide.



Who is eligible for the extended furlough scheme?

Employers

Any employer of any size may be eligible for the furlough scheme; this includes businesses, charities and recruitment agencies.

To be eligible, the employer must have an online UK PAYE payroll scheme, registered on HMRC's real time information ("RTI") system, and have a UK bank account.

- The PAYE payroll scheme must have been created, registered and started:
 - on or before 30 October 2020, for furlough periods starting on or after 1 November 2020; or
 - on or before 2 March 2021, for furlough periods starting on or after 1 May 2021.

Where employers receive public funding for staff costs, and that funding is continuing, the government expects employers to use that money to continue to pay staff as usual rather than putting them on furlough.

Employees/Workers

Eligible employers can claim under the furlough scheme in respect of employees and workers who are prevented from working because of circumstances arising as a result of coronavirus or coronavirus disease, or any measures taken to prevent or limit its further transmission.



This includes:

- full time and part time employees;
- agency workers;
- zero-hour or flexible contract workers; and
- apprentices (provided that they are paid at least the applicable apprenticeship national minimum wage rate for all the time they spend training).

Employees and workers will be covered by the furlough scheme going forward provided that:

- they were employed by a UK employer and on their PAYE payroll:
 - on or before 30 October 2020 (for furlough periods from 1 November 2020 to 30 April 2021), or
 - on or before 2 March 2021 (for furlough periods starting on or after 1 May 2021); and
- a PAYE payroll real time information (“RTI”) submission was made for them to HMRC:
 - between 20 March 2020 and 30 October 2020 (for furlough periods from 1 November 2020 to 30 April 2021), or
 - between 20 March 2020 and 2 March 2021 (for periods starting on or after 1 May 2021).

Employers do not need to have previously claimed for an employee before 30 October 2020 to claim for periods from 1 November 2020, and similarly do not need to have previously claimed for an employee before 2 March 2021 to claim for periods from 1 May 2021.

The position is more complex for employees who are on unpaid leave (like, for example, a sabbatical), and employees who are on family related leave (such as maternity, paternity, adoption or shared parental leave). Such employees may not be eligible for furlough pay, depending on the circumstances.

Employers also cannot claim under the CJRS for any employee who is serving a contractual or statutory notice period in advance of termination of employment, nor can CJRS grants be used to supplement or substitute redundancy payments.

An employee cannot claim under the CJRS for themselves, or if self-employed; though a separate scheme has been set up for those who are self-employed.



Furlough leave can be “flexible”

Employers can furlough employees and workers for any amount of time and any work pattern. There is no minimum furlough period, and furlough periods can last for any amount of time (though there is a minimum claim period of 7 calendar days).

Employees can be furloughed on a part-time basis and work part-time for the remainder of their contractual hours.

Employees can also be furloughed if they are unable to work (including working from home or reduced hours) because of caring responsibilities resulting from COVID-19.

Employers must confirm to their employees in writing that they have been furloughed, on what terms, and for what period.

Employers should only make changes to existing employment contracts by agreement (including in relation to pay and hours).

The usual employment laws, rights and obligations will continue to apply, and employers should bear in mind that placing 20 or more staff on furlough leave may trigger collective consultation obligations.

Employees cannot undertake any work for their employer during any period of furlough leave.

This includes any work that:

- makes money for the employer's organisation (or any linked or associated organisation); or
- provides services for the employer's organisation (or any linked or associated organisation).

Furloughed employees can, however, undertake training with their employer and can also undertake employee representative duties for the purpose of individual or collective representation of employee or other workers, provided that in doing so they do not provide services or generate revenue for or on behalf of the employer (or any linked or associated organisation).

Furloughed employees can also carry out volunteer work for another employer or organisation.



Tricky issues: holiday and sickness absence during furlough leave

Holiday and furlough leave

As employees remain employed during furlough leave, they will continue to accrue statutory and contractual annual leave during any furlough period, in accordance with their contract of employment.

Employees on furlough leave can choose to take holiday during that period if they wish to do so, without bringing their furlough leave to an end. The usual statutory and contractual notice requirements for taking holiday will continue to apply.

If an employer wishes to require an employee to take holiday while on furlough, the employer should first consider whether any restrictions the employee is under, such as the need to socially distance or self-isolate, would prevent the employee from resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday. If so, it may not be appropriate to require the employee to take holiday during that time.

Employees are entitled to be paid their full contractual pay during any periods of holiday, even if such holiday is taken during a furlough period. Employers can continue to claim furlough pay for the employee for the same period through the furlough scheme, but will have to top-up any difference between the two.

Employees who have not been able to take all of their statutory annual leave entitlement by the end of 2020 due to COVID-19 have a new legal right to carry over up to 4 weeks' paid holiday into the next 2 leave years.

However, workers who are on furlough and are able to take their leave during their furlough period may not need to carry it forward. Working employees should not be placed on furlough simply because they are on holiday for that time.

Sickness during furlough leave

Furlough leave is not intended to be used for short-term absences from work due to sickness in lieu of sick leave, and short term illness or self-isolation as a result of Coronavirus should not be a consideration in deciding whether to furlough an employee.

Employees who are ill, or self-isolating as a result of coronavirus, and are unable to work, should normally be placed on sick leave and be paid any statutory sick pay (“SSP”) and/or contractual sick pay to which they are entitled.

However, the government guidance does state that, if employers want to furlough employees who are currently off sick for business reasons, they may do so in the same way as other employees. Employers can also furlough employees who are clinically extremely vulnerable or at the highest risk of severe illness from Coronavirus.

Furloughed employees who are, or become, ill during a period of furlough leave must be paid an amount at least equivalent to any SSP to which they are entitled, and may be entitled to a higher rate of sick pay under the terms of their contract of employment. However, though employers can claim from both the furlough scheme and the SSP rebate scheme for the same employee, they cannot do so for the same period of time. Employers will therefore have to decide whether to move employees who are or become ill during a period of furlough leave on to SSP or keep them on furlough pay (subject, of course, to any relevant entitlements to higher rates of pay in the employee’s contract of employment).

Furlough pay claim deadlines

Claims under the furlough scheme must be submitted to HMRC by the relevant claim deadline.

These are:

- 14 April 2021: deadline for March claims.
- 14 May 2021: deadline for April claims.
- 14 June 2021: deadline for May claims.
- 14 July 2021: deadline for June claims.
- 16 August 2021: deadline for July claims.
- 14 September 2021: deadline for August claims.
- 14 October 2021: deadline for September claims.

Claims can be made more than 14 days in advance of the pay date (for example, if employees are paid in arrears). Claims cannot be submitted more than 14 days before the claim period ends. However employers do not have to wait until one previous claim period ends before making the next claim.

Employers can no longer submit claims for periods ending on or before 31 October 2020.

Record-keeping requirements

Employers must keep written records to show that their employees were furloughed in compliance with the rules of the scheme.

Employers must confirm in writing to any employee who has been furloughed, that they have been furloughed, on what terms, and for what period. The employee does not have to provide a written response as a requirement of the furlough scheme but, as furlough is a variation to the contract of employment, this may well be necessary to demonstrate that the variation was agreed.

Employers must keep a written record of the furlough agreement for at least 5 years.

Employers should also keep a copy of all records relating to the furloughing of their staff for 6 years, including:

- the amount claimed and claim period for each employee;
- the claim reference number;
- the employer's calculations, in case HMRC need more information about the claim; and
 - for employees who were flexibly furloughed, usual hours worked and actual hours worked, including any calculations that were required.

If an employer claims from the furlough scheme for any period starting on or after 1 December 2020, HMRC will publish details of the claim on the [gov.uk](https://www.gov.uk) website. This information will be published monthly, and will include the employers' name and the value of the claim made. There are extremely limited circumstances in which employers can request their details are not published, which will not apply to the majority of employers.



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