

Coronavirus Job Retention Scheme

(Lecture P1228 – 12.17 minutes)

The government has confirmed that the:

- CJRS will be extended until 31 March 2021;
- Job Retention Bonus will be cancelled;
- Job Support Scheme is being postponed.

The extended scheme sees us return to the rules as they were in August 2020 with both full-time and flexible furloughing allowed. As for earlier CJRS grants, all employment rights continue during furlough, and employees can train, volunteer, or work for another employer whilst furloughed.

For hours not worked, employees will receive 80% of their current salary up to a maximum of £2,500 per month, with employers only having to pay Class 1 secondary National Insurance contributions and pensions contributions. As before, employers may choose to top up the employee's wages if they wish but are under no obligation to do so.

The government will review the scheme in January 2021 and decide if employers should contribute more for February and March 2021.

The scheme will be available to employees on any type of contract including full-time, part-time, agency, flexible or zero hour contracts. Foreign nationals are also eligible to be furloughed.

To be eligible for the extended scheme:

- employees do not need to have been furloughed under the CJRS scheme before but must have been on their employer's payroll on 30th October 2020;
- employers do not need to have used the CJRS previously, but must have made a PAYE RTI submission between 20th March 2020 and 30th October 2020 notifying a payment of earnings;
- employers can claim, whether their businesses are open or closed, for any number of employees.

Directors

As before, salaried directors can be furloughed provided they meet the eligibility criteria, but the grant will only cover regular pay and it will not include dividends. Remember, once furloughed, these directors can only carry out statutory duties such as filing the financial statements.

Company directors with an annual pay period are eligible for the scheme from November provided that the company has made an RTI submission between 20 March 2020 and 30 October 2020 notifying HMRC of a payment of earnings for that director.

Employees who have been made redundant

If employees were made redundant after 23 September 2020, employers can choose to re-employ them but are under no obligation to do so. Provided the employee was employed on 23 September 2020 and the employer made a PAYE RTI submission to HMRC between 20 March 2020 and 23 September 2020, notifying a payment of earnings for that employee, they can then be furloughed. This includes fixed term contract employees whose contract expired after 23 September.

For claim periods relating to November, the government has confirmed that employers can continue to claim the grant for a furloughed employee serving a statutory notice period, but the grant cannot be used to substitute redundancy payments. This changes from 1 December 2020 when employers can no longer claim the grant for any days for which the furloughed employee was serving a contractual or statutory notice period. This includes employees serving notice of retirement or resignation. Where an employee subsequently starts a contractual or statutory notice period on a day covered by a previously submitted claim, this will need to be repaid.

If you make an employee redundant, you should base statutory redundancy and statutory notice pay on their normal wage rather than the reduced furlough wage.

Usual hours and pay

As before, to be able to calculate the grant employers will need to confirm the correct wages to use as well as employees' usual and furloughed hours. To do so, it is important to look at the correct reference period.

For many fixed hours employees, this will be the last pay period ending on or before 19 March 2020. However, where employees were employed on or after 20 March 2020, the reference period is the last pay period ending on or before 30 October 2020.

For variable pay employees who were on an employer's payroll on 19 March 2020, the 80% calculation will be based on the higher of the employee's:

- wages earned in the corresponding calendar period in 2019/20;
- average wages payable in 2019/2020.

The same calculation applies for any CJRS claims up to 31 October 2020.

For variable pay or hours employees employed for the first time from 20 March 2020, the 80% calculation is based on the average pay between the later of the start of employment or 6 April 2020, and the day before they are furloughed on or after 1 November 2020.

Claim deadlines

Claims from 1 November 2020 must be submitted by 14 calendar days after the month of claim or the next working day if this time falls on the weekend.

Month of claim

November 2020

Claim by

14 December 2020

<u>Month of claim</u>	<u>Claim by</u>
December 2020	14 January 2021
January 2021	15 February 2021
February 2021	15 March 2021
March 2021	14 April 2021

<https://www.gov.uk/government/collections/coronavirus-job-retention-scheme>

Coronavirus support payment penalties

As reported previously, FA2020 contained provisions to enable HMRC to levy penalties on those who have incorrectly claimed under the Job Retention Scheme, the Self Employed Income Support Scheme and the Eat Out to Help Out scheme. At the time the legislation was published, there was little guidance on how HMRC would apply the provisions. However, they have now issued a new helpsheet, CC/FS11a about the penalties.

The amounts have to be repaid where a recipient was not being entitled to the amount they receive. Not being entitled includes:

- Never being entitled
- Ceasing to be entitled because of change of circumstances or
- Not paying the costs that the scheme was supported to reimburse

It has become clear in recent weeks, that HMRC are going to seek repayment in all cases where there has been an overpayment even if this is not deliberate.

This is causing some concern amongst accountants who made their best attempts at calculating furlough claims when it was not always clear exactly what the guidance meant. It is less likely to be an issue with SEISS since HMRC calculated the amount due so there was no scope for an amount to be inadvertently claimed.

Then we have to consider the penalty regime.

Penalties are levied under the failure to notify chargeability provisions. HMRC must be notified of the incorrect claim on the later of:

- 90 days after Royal Assent
- 90 days after the day on which the income tax became chargeable

Royal Assent was on 21 July 2020 so the initial deadline for notification was 20 October 2020, which has clearly passed.

If chargeability is not notified, then the consequent penalties become due and payable.

The legislation refers to the fact that if a person knew at the point at which the income tax became chargeable that they were not entitled to the amount of the payment, then the offence will be deliberate and concealed. The penalty for a deliberate and concealed offence is 100% of the potential lost revenue being the amount overclaimed.

It was thought by some, the author included, that this meant that HMRC were only going to pursue penalties where this applied ie where there was a deliberate intention to fraudulently claim payments. However, the helpsheet now published makes it clear that any failure to tell HMRC that there is an overpayment of grants will be potentially penalised.

Under the heading 'what is failure to notify' the guidance states 'if you have received a coronavirus support payment that you are not entitled to, you must tell us about this by the end of the notification period. If you do not do this, we call this a failure to notify'. So even if you have innocently received an amount rather than deliberately claiming, you could be penalised.

It is made clear that they will not charge a penalty if all of the following apply:

- There is a reasonable excuse for the failure to notify
- The failure to notify was not deliberate
- You notified without unreasonable delay after the reasonable excuse ended.

The guidance then goes on to explain that a reasonable excuse is 'something that stopped you from meeting a tax obligation on time even though you took reasonable care to make sure that you did so.

So what would constitute a reasonable excuse? This has been considered in the Courts but there are no definitive rules as to what might or might not be a reasonable excuse. It is clear that it depends on a review of all the facts and circumstances with regard to the experience and capacity of the taxpayer. Whilst it is acknowledged that mistakes can be sheltered, it is only if there was a reasonable excuse for making that mistake. Equally, a honest and genuine belief that something is correct is not, in itself, sufficient to demonstrate that you have a reasonable excuse.

At this stage, it is unclear as to what circumstances HMRC are going to take into account and, in particular, whether they will accept that the confusion around the calculation of some of these amounts in the initial phases of the pandemic are sufficient to demonstrate a reasonable excuse.

The penalty if it is going to be applicable will depend on the nature of the behaviour, when the disclosure is made and whether that disclosure is prompted or unprompted.

Behaviour	Unprompted or prompted	Penalty range
Non-deliberate	Unprompted within 12 months of tax being due	0 – 30%
	Unprompted – 12 months or more after tax was due	10 – 30%
	Prompted within 12 months of tax being due	10 – 30%
	Prompted – 12 months or more after tax was due	20 – 30%
Deliberate	Unprompted	20 – 70%
	Prompted	35 – 70%
Deliberate and concealed or treated as deliberate and concealed	Unprompted	30 – 100%
	Prompted	50 – 100%

The actual penalty within those ranges will depend on the quality of disclosure being:

- 30% for telling
- 40% for helping
- 40% for giving access to records.

Contributed by Ros Martin