

The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction

The Treasury, in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020, give the following direction:

1. This direction applies to Her Majesty's Revenue and Customs.
2. This direction requires Her Majesty's Revenue and Customs to be responsible for the payment and management of amounts to be paid under the scheme set out in the Schedule to this direction (the Coronavirus Job Retention Scheme).
3. This direction has effect for the duration of the scheme.

Signed by the Chancellor of the Exchequer



Her Majesty's Treasury

15 April 2020

SCHEDULE

CORONAVIRUS JOB RETENTION SCHEME

Introduction

1. This Schedule sets out a scheme to be known as the Coronavirus Job Retention Scheme (“CJRS”).

Purpose of scheme

- 2.1 The purpose of CJRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of furloughed employees arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.
- 2.2 Integral to the purpose of CJRS is that the amounts paid to an employer pursuant to a claim under CJRS are only made by way of reimbursement of the expenditure described in paragraph 8.1 incurred or to be incurred by the employer in respect of the employee to which the claim relates.
- 2.3 The claim must be made in such form and manner and contain such information as HMRC may require at any time (whether before or after payment of the claim) to establish entitlement to payment under CJRS.
- 2.4 Before making payment of a CJRS claim, HMRC must, by publicly available guidance, other publication generally available to the public, or such other means considered appropriate by HMRC, inform a person making a CJRS claim that, by making the claim, the person making the claim accepts that-
 - (a) a payment made pursuant to such claim is made only for the purpose of CJRS (and in particular as provided by paragraph 2.2), and
 - (b) the payment must be returned to HMRC immediately upon the person making the CJRS claim becoming unwilling or unable use the payment for the purpose of CJRS.
- 2.5 No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purpose of CJRS.

Qualifying employers

- 3.1 An employer may make a claim for a payment under CJRS if the following condition is met.
- 3.2 The employer must have a pay as you earn (“PAYE”) scheme registered on HMRC’s real time information system for PAYE on 19 March 2020 (“a qualifying PAYE scheme”).

Employers with more than one PAYE scheme

4. If an employer has more than one qualifying PAYE scheme-
 - (a) the employer must make a separate claim in relation to each scheme, and
 - (b) the amount of any payment under CJRS will be calculated separately in relation to each scheme.

Qualifying costs

5. The costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which-
 - (a) relate to an employee-
 - (i) to whom the employer made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before a day that is a relevant CJRS day,
 - (ii) in relation to whom the employer has not reported a date of cessation of employment on or before that date, and
 - (iii) who is a furloughed employee (see paragraph 6), and
 - (b) meet the relevant conditions in paragraphs 7.1 to 7.15 in relation to the furloughed employee.

Furloughed employees

- 6.1 An employee is a furloughed employee if-
 - (a) the employee has been instructed by the employer to cease all work in relation to their employment,
 - (b) the period for which the employee has ceased (or will have ceased) all work for the employer is 21 calendar days or more, and
 - (c) the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease.
- 6.2 An employee has not ceased all work for an employer if the employee works for a person connected with the employer (see paragraph 13.4) or otherwise works indirectly for the employer.
- 6.3 Where Statutory Sick Pay is payable or liable to be payable in respect of an employee (whether or not a claim to Statutory Sick Pay is made) at the time when the instruction in paragraph 6.1(a) is given ("original SSP"), the period described in paragraph 6.1(b) in respect of the employee does not begin until the original SSP has ended (but any subsequent entitlement to Statutory Sick Pay by virtue of the employee becoming unfit for work again after the original SSP has ended must be disregarded).

- 6.4 If an employee was enjoying an unpaid sabbatical or other period of unpaid leave on 28 February 2020 (“relevant day”), the period described in paragraph 6.1(b) does not begin in respect of the employee until expiry of the period of leave agreed or contemplated at its commencement or, where the duration of the leave was uncertain on the relevant day because its duration is determinable by reference to a particular circumstance, completion of a particular purpose or occurrence of a specified event, the ending of the circumstance, completion of the purpose or occurrence of the event.
- 6.5 No claim to CJRS may be made in respect of an unpaid sabbatical or other period of unpaid leave of an employee beginning before or after 19 March 2020 (whether agreed or otherwise arranged conditionally or unconditionally on, before or after that day).
- 6.6 Work undertaken by a director of a company to fulfil a duty or other obligation arising by or under an Act of Parliament relating to the filing of company accounts or provision of other information relating to the administration of the director’s company must be disregarded for the purposes of paragraph 6.1(a).
- 6.7 An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment.
- 6.8 Training activities directly relevant to an employee’s employment agreed between the employer and the employee before being undertaken must be disregarded for the purposes of paragraph 6.1(a).

Qualifying costs – further conditions

- 7.1 Costs of employment meet the conditions in this paragraph if-
- (a) they relate to the payment of earnings to an employee during a period in which the employee is furloughed, and
 - (b) the employee is being paid-
 - (i) £2500 or more per month (or, if the employee is paid daily or on some other periodic basis, the appropriate pro-rata), or
 - (ii) where the employee is being paid less than the amounts set out in paragraph 7.1(b)(i), the employee is being paid an amount equal to at least 80% of the employee’s reference salary.
- 7.2 Except in relation to a fixed rate employee, the reference salary of an employee or a person treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) is the greater of-
- (a) the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment) before the period of furlough began, and
 - (b) the actual amount paid to the employee in the corresponding calendar period in the previous year.

- 7.3 In calculating the employee's reference salary for the purposes of paragraphs 7.2 and 7.7, no account is to be taken of anything which is not regular salary or wages.
- 7.4 In paragraph 7.3 "regular" in relation to salary or wages means so much of the amount of the salary or wages as-
- (a) cannot vary according to any of the relevant matters described in paragraph 7.5 except where the variation in the amount arises as described in paragraph 7.4(d),
 - (b) is not conditional on any matter,
 - (c) is not a benefit of any other kind, and
 - (d) arises from a legally enforceable agreement, understanding, scheme, transaction or series of transactions.
- 7.5 The relevant matters are-
- (a) the performance of or any part of any business of the employer or any business of a person connected with the employer,
 - (b) the contribution made by the employee to the performance of, or any part of any business,
 - (c) the performance by the employee of any duties of the employment, and
 - (d) any similar considerations or otherwise payable at the discretion of the employer or any other person (such as a gratuity).
- 7.6 A person is a fixed rate employee if-
- (a) the person is an employee or treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership),
 - (b) the person is entitled under their contract to be paid an annual salary,
 - (c) the person is entitled under their contract to be paid that salary in respect of a number of hours in a year whether those hours are specified in or ascertained in accordance with their contract ("the basic hours"),
 - (d) the person is not entitled under their contract to a payment in respect of the basic hours other than an annual salary,
 - (e) the person is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month in equal weekly, multiple of weeks or monthly instalments ("the salary period"), and
 - (f) the basic hours worked in a salary period do not normally vary according to business, economic or agricultural seasonal considerations.
- 7.7 The reference salary of a fixed rate employee is the amount payable to the employee in the latest salary period ending on or before 19 March 2020 (but disregarding anything which is not regular salary or wages as described in paragraph 7.3).
- 7.8 In paragraph 7.6 "contract" means a legally enforceable agreement as described in paragraph 7.4(d).

- 7.9 In calculating an employee's reference salary in accordance with paragraphs 7.2 or 7.7 in the case of a person ("P") treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) then, in addition to the matters described in paragraphs 7.3 to 7.5, no account is to be taken of an amount payable to P unless, by virtue of arrangements described in section 863B(5) of the Income Tax (Trading and Other Income) Act 2005, that amount-
- (a) is fixed,
 - (b) is variable, but is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or
 - (c) is not, in practice, affected by the overall amount of those profits or losses.
- 7.10 In respect of a fixed rate employee, where a period by reference to which the reference salary is determinable ("reference salary period") includes a period of unpaid sabbatical or unpaid leave ("unpaid period"), the reference salary must be determined on the basis of what would have been paid to the employee during the unpaid period if the sabbatical or leave had been granted on the same terms as the employee's paid leave during the reference salary period taking account of the matters described in paragraphs 7.13 to 7.15 as are appropriate.
- 7.11 Where paragraph 7.12 applies, the sum of the original payment described in paragraph 7.12(a) and the further amount described in paragraph 7.12(c) must be treated as having been paid at the time of the payment of the original payment for the purposes of paragraph 7.1(b)(ii).
- 7.12 This paragraph applies where-
- (a) in the period beginning on 1 March 2020 and ending on the third day after the making this direction an amount by way of wages or salary is paid in respect of a period of employment ("the original payment") to an employee,
 - (b) the original payment is less than the amount required by paragraph 7.1(b)(ii) for the purpose of claiming CJRS,
 - (c) before making a CJRS claim in respect of the original payment the employer pays the employee a further amount ("the further amount") in respect of the period of employment to which the original payment relates, and
 - (d) the sum of the original payment and the further amount meets the requirements of paragraph 7.1(b)(ii).
- 7.13 The provision made by paragraph 7.10 applies in relation to a fixed rate employee who is a relevant employee as if the references to unpaid sabbatical and unpaid leave also include references to social benefit leave.
- 7.14 A person is a relevant employee if-
- (a) the person is employed by an employer,
 - (b) the person has been granted a period of social benefit leave beginning before the period mentioned in paragraph 12 (duration of CJRS),

- (c) at the time when it began, it was expected or considered likely that the period of social benefit leave would end at a time falling during the period mentioned in paragraph 12,
 - (d) the period of social benefit leave ended during the period mentioned in paragraph 12, and
 - (e) the period of furlough in respect of the person began after the end of the period of social benefit leave.
- 7.15 For the purposes of paragraphs 7.13 and 7.14, social benefit leave means a period of time in respect of which any of the benefits specified in paragraph 8.7 is payable in respect of the person described in paragraph 7.14(a).
- 7.16 Where paragraph 7.17 applies, a person making their first CJRS claim in respect of a fixed rate employee may make that claim as if paragraph 7.7 referred to 28 February 2020 in place of 19 March 2020.
- 7.17 This paragraph applies where, in anticipation of making the first CJRS claim in respect of the employee mentioned in paragraph 7.16 and before the publication of this direction, the person determined the employee's reference salary as if paragraph 7.7 referred to 28 February 2020.

Expenditure to be reimbursed

- 8.1 Subject as follows, on a claim by an employer for a payment under CJRS, the payment may reimburse-
- (a) the gross amount of earnings paid or reasonably expected to be paid by the employer to an employee;
 - (b) any employer national insurance contributions liable to be paid by the employer arising from the payment of the gross amount;
 - (c) the amount allowable as a CJRS claimable pension contribution.
- 8.2 The amount to be paid to reimburse the gross amount of earnings must (subject to paragraph 8.6) not exceed the lower of-
- (a) £2,500 per month, and
 - (b) the amount equal to 80% of the employee's reference salary (see paragraphs 7.1 to 7.15).
- 8.3 The amount to be paid to reimburse any employer national insurance contributions must not exceed the amount of employer's contributions that would have been assessed on the amount of gross earnings being reimbursed under CJRS.
- 8.4 The total amount to be paid to reimburse any employer national insurance contributions must not exceed the total amount of employer's contributions actually paid by the employer for the period of the claim.

- 8.5 For the purposes of CJRS, “employer national insurance contributions” are the secondary Class 1 contributions an employer is liable to pay as a secondary contributor in respect of an employee by virtue of sections 6 and 7 of the Social Security Contributions and Benefits Act 1992 (“SSCBA”) or sections 6 and 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“SSCB(NI)A”).
- 8.6 No claim under CJRS may include amounts of specified benefits payable or liable to be payable in respect of an employee (whether or not a claim to the relevant specified benefit is actually made) during the employee’s period of furlough and the gross amount of earnings falling for reimbursement as described in paragraph 8.2 must be correspondingly reduced.
- 8.7 The specified benefits for the purposes of paragraph 8.6 are-
- (a) Statutory Sick Pay pursuant to section 151 of SSCBA or section 147 of SSCB(NI)A;
 - (b) Statutory Maternity Pay pursuant to section 164 of SSCBA or section 160 of SSCB(NI)A;
 - (c) Statutory Adoption Pay pursuant to section 171ZL of SSCBA or section 167ZL of SSCB(NI)A;
 - (d) Statutory Paternity Pay pursuant to sections 171ZA and 171ZB of SSCBA or sections 167ZA and 167ZB of SSCB(NI)A;
 - (e) Statutory Shared Parental Pay pursuant to sections 171ZU and 171ZV of SSCBA or sections 167ZU and 167 ZW of SSCB(NI)A;
 - (f) Statutory Parental Bereavement Pay pursuant to section 171ZZ6 of SSCBA or any provision made for Northern Ireland which corresponds to that section.
- 8.8 A payment by an employer of a pension contribution in respect of an employee to a registered pension scheme is a CJRS claimable pension contribution if it is paid in respect of an amount of gross earnings as described in paragraph 8.1(a).
- 8.9 The amount allowable as a CJRS claimable pension contribution under paragraph 8.1(c) is the lower of-
- (a) the contribution payable by the employer in respect of the employee to the registered pension scheme for the relevant CJRS period, and
 - (b) 3% of the part of the gross earnings paid to an employee in a pay reference period as applicable to the employee of 12 months that are-
 - (i) more than the lower limit for qualifying earnings in that pay reference period (as set out in section 13(1)(a) of the Pensions Act 2008), and
 - (ii) not more than the amount claimable by the employer under CJRS in respect of an amount of gross earnings as described in paragraph 8.1(a) in the same pay reference period.
- 8.10 In the case of a pay reference period of less or more than 12 months, paragraph 8.9(b) applies as if the amounts described in that paragraph were proportionately less or more as appropriate.

- 8.11 For the purposes of determining whether sub-paragraph (a) or sub-paragraph (b) is applicable in paragraph 8.9-
- (a) the same duration of relevant CJRS period and pay reference period shall be used to compare the lower of the amounts under sub-paragraphs 8.9(a) and 8.9(b),
 - (b) whichever sub-paragraph produces the lower of these two amounts shall be the relevant sub-paragraph for the purposes of determining the amount allowable to be paid as a CJRS claimable pension contribution under paragraph 8.1(c), and
 - (c) the duration of the period used to compare sub-paragraphs 8.9(a) and 8.9(b) is not required to be identical to the period for determining the actual amount allowable that is to be paid under paragraph 8.1(c).
- 8.12 For the purposes of paragraphs 8.8 to 8.11-
- (a) “registered pension scheme” means a pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (b) “pay reference period” has the meaning given in section 15 of the Pensions Act 2008 and regulations made thereunder;
 - (c) “relevant CJRS period” means the period, part-period or periods over which the employer is required or accustomed to pay pension contributions in respect of the employee that fall within the period of the claim for a payment under CJRS.

Succession to a business – new employer has no qualifying PAYE scheme

- 9.1 A new employer may make a claim for a payment under CJRS in respect of a relevant employee as if the new employer had-
- (a) a qualifying PAYE scheme, and
 - (b) made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020.
- 9.2 An employer is a new employer for the purposes of CJRS if the employer’s PAYE scheme-
- (a) is not a qualifying PAYE scheme solely because the employer’s PAYE scheme was registered on HMRC’s real time information for PAYE after 19 March 2020, and
 - (b) has effect in relation to the relevant employee.
- 9.3 An employee is a relevant employee if-
- (a) on 19 March 2020, the employee was employed by an employer (former employer) who is not the new employer,
 - (b) after 19 March 2020, there is a change in the employee’s employer from the former employer to the new employer while the employee remains in employment in the same business,
 - (c) immediately before the change, the former employer’s PAYE scheme having effect in relation to the employee was a qualifying PAYE scheme, and

(d) any of the circumstances in paragraph 9.10 apply.

10. The circumstances referred to by paragraph 9.3(d) are-

- (a) regulation 102 of the PAYE Regulations has effect so that the change of employer from the former employer to the new employer is not to be treated as a cessation of employment for the purposes of regulation 36 of those Regulations (cessation of employment: Form P45);
- (b) the transfer of the business or undertaking (or part thereof) resulting in the change in the employee's employer from the former employer to the new employer does not operate so as to terminate the contract of employment of the employee by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- (c) the transfer of the trade, business or undertaking resulting in the change in the employee's employer from the former employer to the new employer does not operate so as to break the continuity of the period of employment of the employee by virtue of section 218 of the Employment Rights Act 1996.

Succession to a business – new employer already has a qualifying PAYE scheme

10.1 Paragraph 10.2 applies in a case where-

- (a) an employer is unable to make a claim to CJRS pursuant to paragraphs 9.1 to 9.3 solely because the employer has a qualifying PAYE scheme, and
- (b) that qualifying PAYE scheme has effect in relation to a relevant employee.

10.2 Where this paragraph applies, entitlement to a claim to CJRS must be determined as if the employer had made a payment of earnings to the relevant employee in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before 19 March 2020 (as required by paragraph 5.(a)(i)).

PAYE scheme reorganisations

11.1 A PAYE scheme registered on HMRC's real time information system for PAYE after 19 March 2020 ("new scheme") is a qualifying PAYE scheme if-

- (a) the purpose of the new scheme is to replace at least two (but not necessarily all) of the employer's qualifying PAYE schemes ("the transferred schemes") in consequence of a reorganisation of the employer's business, and
- (b) the new scheme only has effect in relation to employees who are former members of one of the transferred schemes before the new scheme has effect in relation to any other employee.

11.2 An employee is a former member of one of the transferred schemes if-

- (a) the new scheme has effect in relation to the employee, and
- (b) one of the transferred schemes has effect in relation to the employee immediately before the new scheme has effect in relation to the employee.

- 11.3 Where a new scheme is a qualifying PAYE scheme by virtue of paragraph 11.1, a payment of earnings to a former member of one of the transferred schemes in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020 in respect of one of the transferred schemes must be treated for the purposes of paragraph 5.(a)(i) as if the new scheme had effect in relation to the payment of earnings and had been shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020 in respect of the new scheme.

Duration of CJRS

12. CJRS has effect only in relation to amounts of earnings paid or payable by employers to furloughed employees in respect of the period beginning on 1 March 2020 and ending on 31 May 2020 and employer national insurance contributions and directed pension payments paid or payable in relation to such earnings.

Definitions etc.

- 13.1 For the purposes of CJRS-
- (a) a day is a relevant CJRS day if that day is-
 - (i) 28 February 2020, or
 - (ii) 19 March 2020.
 - (b) “charity” has the same meaning as it does in section 18 of the Small Charitable Donations Act 2012 (“SCDA”);
 - (c) “company” has the same meaning as it does for the purposes of the Corporation Tax Acts set out in section 1121 of the Corporation Tax Act 2010 (“CTA”);
 - (d) “earnings” has the same meaning as it does in the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) by virtue of section 62 of that Act;
 - (e) “employment” and corresponding references to “employed”, “employer” and “employee” have the same meanings as they do in section 4 of ITEPA as extended by-
 - (i) section 5 of that Act,
 - (ii) regulation 10 of the PAYE Regulations (application to agencies and agency workers), and
 - (iii) paragraphs 13.2 and 13.3 of this Direction;
 - (f) “HMRC” means Her Majesty’s Revenue and Customs
 - (g) “PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003.
- 13.2 Where, by virtue of section 61R of ITEPA (workers services provided to the public sector through intermediaries), the Income Tax Acts apply as if a worker were employed by an

employer, the worker is treated for the purposes of the CJRS as an employee (and, in particular, amounts treated as earnings are treated as earnings for those purposes).

- 13.3 Where, by virtue of section 863A of the Income Tax (Trading and Other Income) Act 2005 (limited liability partnerships: salaried members), a person (“P”) is treated for the purposes of the Income Tax Acts as being employed by a limited liability partnership (“E”) under a contract of service instead of being a member of the partnership-
- (a) P is treated as an employee for the purposes of the CJRS, and
 - (b) E is treated as P’s employer for the purposes of the CRS.
- 13.4 For the purposes of determining whether a person, company or charity is connected with an employer for the purposes of CJRS-
- (a) whether a person is connected with an employer must be determined in accordance with section 993 of the Income Tax Act 2007;
 - (b) without prejudice to paragraphs 13.4(a) and 13.4(c), whether a company is connected with an employer (where the employer is a company) must be determined in accordance with section 1122 of CTA;
 - (c) without prejudice to paragraphs 13.4(a) and 13.4(b), whether a charity is connected with an employer (where the employer is a charity) must be determined in accordance with section 5 of SCDA construed as if-
 - (i) references to a tax year in that section were omitted, and
 - (ii) subsection (7) of that section were omitted.

Other directions under section 76 of the Coronavirus Act 2020

- 14.1 HMRC must take account of any amendment made to CJRS by any other direction under section 76 of the Coronavirus Act 2020.
- 14.2 Entitlement to a payment under CJRS is without prejudice to any entitlement to a payment under any similar scheme arising from a direction under section 76 of the Coronavirus Act 2020.

HMRC’s accounts

15. CJRS payments made by HMRC must be shown in HMRC’s consolidated accounts produced for the purposes of Section 6(4) of the Government Resources and Accounts Act 2000 and Section 2 of the Exchequer and Audit Departments Act 1921 for the year ending on 31 March 2021.