

Furlough: CJRS scheme extended again - current issues and priorities for employers

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The Spring Budget on 3 March 2021 included an announcement that the government would continue the Coronavirus Job Retention Scheme (CJRS), better known as the furlough scheme, for all sectors until 30 September 2021. This came as highly welcome news for many employers. While an extension of the scheme beyond its planned closure date of 30 April 2021 had been widely anticipated, many had expected it would finish at the end of June.

The extension means that the CJRS will remain in place for several months after the planned full reopening of the economy in England on 21 June 2021 and will have been in place for a total of 18 months by the time it closes.

According to the latest government statistics, approximately 4.7 million employees are currently furloughed. Take-up is highest in the accommodation and food services sector, where about 1.15 million employees are furloughed. In the wholesale and retail sector, about 950,000 employees are furloughed, down from a peak in April 2020 when 1.85 million employees in that sector were included in the scheme.

Main features of the scheme

The furlough scheme will continue to pay 80% of employees' usual pay, capped at £2,500 per month. The level of support will, however, taper down in the final stages of the CJRS as follows:

- until the end of June 2021, the government will continue to pay the full 80%;
- during July 2021, employers will contribute 10%, with the government putting in 70%; and
- in August and September 2021, employers will contribute 20%, with the government putting in 60%.

Employers will throughout continue to pay all employers' National Insurance and pension contributions.

The extended scheme is not going to be limited to any specific sectors, so will be open to any employer that needs to rely on it. The government will continue to publish the names of companies and limited liability partnerships that make claims under the scheme, together with an indication of the value of the claim (within a banded range).

Flexible furlough will continue as an option, meaning employees can work part-time and receive a furlough grant for their unworked hours. This allows employers to bring employees back to work progressively as the economy reopens and their business gets back on its feet.

Employers can claim for new joiners who started between 31 October 2020 and 2 March 2021 but will need to wait until May before furloughing them. Crucially, however, the guidance indicates that employers cannot claim for any new joiner who was recruited on or after 3 March 2021. This makes resourcing decisions trickier, since new starters cannot be furloughed if trading conditions suddenly deteriorate.

Furlough pay for most employees will continue to be based on usual pre-Covid-19 pay rates. It is noteworthy that there will have been two increases to national minimum wage rates during the lifetime of the CJRS (in April 2020 and April 2021). For some employees, this means a widening of the gap between furlough pay rates and rates for hours worked. On the other hand, some employees who have agreed cuts to pay or hours may find that the furlough pay rates will be more favourable than current arrangements.

The government has updated its [guidance](#) to reflect the extension of the scheme until September 2021, although some details are yet to be clarified (for example, the calculation of furlough pay for joiners between 31 October 2020 and 2 March 2021).

Points to consider

Clearly the extension is good news for businesses relying on the furlough scheme to keep their employees attached to the business and who do not expect a bounce-back to normal trading in the short term. There will be ongoing public scrutiny of which organisations are claiming under the CJRS, however, particularly for businesses that benefit from government grants or are perceived to have done well during the pandemic.

Rising employer costs

Employers thinking of using the extended scheme will need to assess whether they can afford to make the minimum contribution levels. The government previously introduced a 10% employer contribution to the CJRS in September 2020, which correlated with a significant drop in claims under the scheme. We can expect to see a similar scenario in July 2021 when the 10% contribution is reintroduced, with many employers reconsidering their resourcing options and looking at restructuring or redundancies.

For those determining that maintaining their workforce on full or flexible furlough is not viable, there are careful strategic decisions to make. If employers need to implement redundancies, there is nothing to prevent them consulting with employees while they are

on furlough. Some employers may therefore wish to commence consultation with employees in advance of 1 July 2021 to allow for employment costs during consultation to be fully absorbed by the CJRS.

Where a redundancy proposal would result in the dismissal of 20 or more employees at one establishment during a 90-day period, collective consultation obligations are triggered. These require a minimum consultation period of either 30 days (for between 20 and 99 dismissals) or 45 days (for 100 or more dismissals). That means employers would need to start consultation, at the very latest, by mid-May or the start of June (depending on numbers) to complete it before the cost of furlough increases. They should, of course, be mindful of the fact that the legal duty to consult is triggered once they have formulated a proposal to make redundancies.

In this context, it should also be remembered that since 1 December 2020, it has no longer been possible to claim under the CJRS for any days on which employees are serving their notice period.

Alternatives to redundancies include pay cuts, which would need to be agreed either by obtaining individual employee consent or via negotiation with a recognised trade union, as appropriate. Collective consultation obligations would not be triggered unless the employer has formed a definite plan likely to result in 20 or more dismissals if pay cuts are not agreed. In that scenario, the decision for the employer is essentially whether to opt for termination and re-engagement on new terms or to pursue alternative measures instead.

Employee consent

Employers who choose to take advantage of the furlough extension will need to ensure that their paperwork is in order. Employees may have received furlough extension letters seeking their consent for previous extensions and this time will be no different.

If employers have previously agreed to top up furlough pay, there is no obligation to continue this arrangement during the extended period of the scheme. It is likely that a new furlough extension agreement would be required to reflect the top up no longer being paid, confirming that the employee accepts the new terms. Employees are naturally entitled to withhold consent to a furlough extension although, in practice, most are unlikely to do so given the probable alternative.

Who to furlough and who to bring back

There is an ongoing question over whether the CJRS can or should be used to support individuals whose jobs only exist within the scheme. The government did not take the opportunity to clarify its guidance on this issue when announcing the extension on 3 March 2021.

As lockdown restrictions ease, we can expect to see new debates about how the furlough scheme interacts with arrangements for schools and with the roll-out of workplace Covid-19 testing and vaccination. For example, the government is currently encouraging eligible employers to take up the offer of workplace lateral flow testing, which raises questions about what happens to asymptomatic employees who test positive. The current furlough guidance does not endorse furloughing these employees and makes clear that the CJRS should not be used for short-term illness or self-isolation. Yet businesses may face

scheduling challenges if staff cannot begin their shift or need to be sent home because of a positive test, and in these circumstances another employee on furlough may need to be called in to cover.

An employee who tests positive and has to self-isolate is only entitled to sick pay. There appear to be no immediate plans to increase the rate of statutory sick pay, so an immediate question for employers is whether they should review their own company sick pay policies. Employees are more likely to consent to testing if they know they will not lose pay if their result is positive.

Another issue to consider is whether it may be possible to use the furlough scheme to support return-to-office plans by bringing back vaccinated employees while keeping those who are not yet (or refuse to be) vaccinated on furlough.

Employers faced many requests from working parents to be furloughed while schools were closed. With schools in England having reopened from 8 March 2021, requests of this nature have no doubt reduced, but working parents will still face childcare issues. For example, if after-school clubs and wraparound care are not yet back to normal, or if children are off sick or self-isolating, full or flexible furlough may be options to consider.

Meanwhile, for clinically extremely vulnerable individuals, the government has stated that advice to shield is set to be paused from the end of March 2021. Many employers will have furloughed employees required to shield, with more recent additions following on from a further 1.7 million individuals having been put on the shielding list in February 2021. The extension of the CJRS is good news both for vulnerable employees who cannot work from home and cautious employers, as keeping such individuals on furlough remains the safest option for those not wishing to return to the workplace.

What will happen when the latest extension ends?

The previously announced Job Retention Bonus and Job Support Scheme (which the government had intended to follow on from the furlough scheme) seem to have been postponed indefinitely and now look unlikely to be introduced. We will have to wait and see whether the government proposes any new incentive for employers to retain staff once furlough support is reduced and finally removed at the end of September. It will no doubt be hoping that an efficient vaccination roll-out, the loosening of restrictions prior to their (possible) complete removal from 21 June 2021 and a further three months of furlough support beyond that point will avoid a cliff edge that would cause significant redundancies.

Reference point

Government guidance on claiming for wages through the Coronavirus Job Retention Scheme: www.legalease.co.uk/claim-cjrs

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