



# CJRS - THE FURLOUGH SCHEME REINVENTED: YOUR QUESTIONS ANSWERED

TAXGUIDE 17/20

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The Coronavirus Job Retention Scheme is being extended until 31 March 2021 and the government's contribution to wage costs for furloughed hours will once again be 80%, subject to the maximum of £2,500, as before.

This TAXguide contains answers to the questions raised by viewers of the webinar, COVID-19: CJRS3 The furlough scheme reinvented, recorded on 20 November 2020 and available to watch again at [icaew.com/taxfac](https://www.icaew.com/taxfac).

In this webinar Kate Upcraft, specialist in tax and payroll, and Anita Monteith, of ICAEW Tax Faculty, navigate the latest version of the Coronavirus Job Retention Scheme.

The webinar provides practical advice and guidance, with a focus on how to claim and the calculations. We explain what has changed and who it affects as well as offering guidance on those newly eligible to receive furlough grants.

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TAXguides are published by the Tax Faculty to provide practical guidance to tax practitioners on important developments to tax practice and policy.

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## FLEXIBLE FURLOUGH

- 1. When agreeing flexible furlough agreements can an agreement be put in place with hours worked to be agreed separately on a weekly or monthly basis, or is a new agreement needed each time working hours change?**

That will be fine as long as you refer to something that creates that additional contractual agreement such as 'you will be notified of your weekly working hours by your line manager and these will be documented on your timesheet'.

- 2. If employees are paid weekly and they are on flexible furlough it is impossible to know at the time they are paid in some cases how long the furlough period will be for. How should one calculate the weekly pay in these case?**

The reference pay is based on history, the worked hours are based on current facts, for example timesheets and you must claim the last weekly pay of November by 14 December.

- 3. I have a client who has shut his business for a week as one of his staff has tested positive for COVID-19. Can we claim furlough for the week rather than have to do all the flexible furlough calculations or does someone have to be off for three weeks to claim 'normal' furlough?**

Yes, three-week furlough ended in June, it's a minimum of a seven-day claim now but you can ask employees to work as many or few hours in that week as you wish.

- 4. Someone was furloughed before and worked one day a week. They now work two days a week (since September) - are they only allowed to claim furlough this time for one day a week?**

You were still using the same calculation for them which looks at the higher of their average hours/pay in 2019/20 and the corresponding period last year.

- 5. We have a staff member who was furloughed in March until June. However since then, on flexi furlough she has worked many more hours than she used to do last year. Can she get more furlough money than calculated based on last year?**

No the old reference pay is used.

- 6. If someone is on a fixed salary but has been flexibly furloughed is this correct that the furloughed hours paid needs to be shown on the payslip?**

Yes the law changed in April 2019.

## STATUTORY SICK PAY (SSP)

- 7. For employees on variable pay, could their reference period include SSP paid by the employer in 2019/20?**

Yes it's still earnings.

- 8. I have a director told to isolate from a trip to Cyprus - he wants SSP for two weeks and claimed via Coronavirus Statutory Sick Pay scheme- is that OK?**

Maybe not, quarantining after an overseas trip does not provide eligibility for SSP unless he was contacted by test and trace as a result of the overseas trip

**9. Can a new employee after 19 March 2020 claim CSSP?**

I'm not sure what CSSP is but if it is coronavirus SSP then yes, SSP rebates were introduced for small employers for eligible periods of sickness starting on or after 13 March 2020. There is no end date and no eligibility criteria other than them being eligible for SSP and the employer had less than 250 employees as at 28 February 2020.

**10. If an employer chooses to re-engage an employee do they still have to pay the employer's pension from the re-engagement date or could they be treated as a 'new' employee and utilise a three month postponement period for Auto Enrolment purposes?**

Re-engage means break of service so yes postponement possible.

Is all SSP for small employers reclaimable or was it just the special SSP.

Only COVID-19 related SSP.

**11. What about those self-isolating because of track and trace. Can they be furloughed? Or can they go on SSP?**

Suggest SSP as it's just a two-week period; a small employer could the claim for this SSP from day one.

**12. We had an employee who was off sick and the employer had stopped furloughing employees. This employee had not been furloughed. They were off sick for 28 weeks. I continued with SSP and did not transfer them to furlough as I didn't think it was appropriate.**

If they had received 28 weeks SSP then they were not entitled to receive more so no more SSP was due and they should have been moved to furlough.

**13. Can you choose to furlough someone who is self-isolating rather than putting them on SSP?**

They should be on SSP as it's short-term absence.

**14. What is considered short term absence for sickness?**

Two weeks self-isolating for example.

## MEETING THE DEADLINES

**15. We have clients with four-weekly payroll periods, and are wondering how best to claim for these periods before the deadlines. If a four-week payroll period covers 23 November to 20 December, how should we claim for 23 November-30 November by the 14 December deadline?**

As you can increase the claim I would report as much as you have factually correct by the deadline and then increase it within the 14 day window to the end of the calendar month.

**16. The lockdown in England ends on 2 December 2020. If no employees are furloughed between 3 December 2020 and 31 December 2020, is the employer not allowed to claim for the two days?**

Yes they can because these are 'orphan' periods which can be less than seven days as long as they follow a preceding claim that ends on the 30 November and that was it for at least seven days

- 17. Where the payroll period spans two months ie Month eight runs from October 2020 to 19 November 2020, we have previously split it into the two separate claim months. What will happen in month nine when it runs from 20 November to 19 December and so will be run post 14 December deadline for claiming for November?**

I would claim as much as you can by 14 December, ie what evidence do you have to allow you to be able to accurately claim as many of that period's weeks (for November) by 14 December as you need to put in a speculative claim that you can then increase. Clearly there will be some weeks you cannot claim by 14 December as they haven't happened by the deadline. The additional 14 days to 29 December will allow you to increase the claim for the additional weeks and that may have to be before you have actually paid employees for those weeks. We have told HMRC the deadlines don't work for mid-month to mid-month payrolls but there appears to be no appetite (in the Treasury) for allowing any additional time.

- 18. Is the increase window 14 days or 14 working days (WD)? There aren't 14 WD between 14 December 2020 and 29 December 2020.**

Working days

- 19. Are we out of time to make a claim for NIC under CJRS version 1 where we made a claim for other aspects for those same employees?**

CJRS 1 claims ended on 31 July 2020, CJRS scheme 2 claims end on 30 November 2020.

## ELIGIBILITY

- 20. Is a new employee taken on in October where the FPS was filed on 31 October 2020 and the pay period is to 01 November 2020, not eligible?**

That is correct if you did file the FPS on Saturday 31st then they are not eligible.

- 21. Can you claim if PAYE scheme not set up until after April 2020?**

No it's fine because as long as the PAYE scheme is in operation before 31 October then the employer will be eligible.

- 22. Hospitality business has shut down for now and will do a refit and then will reopen in the new year. Can they claim furlough for staff through until it reopens January?**

It depends on the reason for closing down for the refit, if this is due to being impacted by coronavirus so there is no business and they've taken the opportunity to do a refit that is in the spirit of the scheme; if they were always planning to close down in December then it isn't and no claim should be made.

- 23. The claim period must usually be for a minimum period of seven days - the exception is for the first and last few days in a calendar month. Does that mean we can claim for just 1 and 2 December in the December claim?**

Yes as long as the last furlough period ended on the 30 November.

- 24. What if business earnings are back to normal, but some staff still furloughed, would that be queried?**

I hope so as a taxpayer! The business is supposed to be operationally impacted by COVID-19.

**25. Can an employee be on full furlough in December while serving their notice?**

No, any days on notice from 1 December 2020 exclude an employee from a claim.

**26. If an employee has served notice to 30 November and been issued with a P45, can they be reemployed and furloughed on a new fixed term contract for December and January 2021?**

Yes

**27. Are there any issues here with employees transferred under TUPE?**

Yes, see guidance on [gov.uk](https://www.gov.uk).

**28. Can I confirm the cut-off date for new starters. I read that new starters had to be on an RTI submission by 30 October 2020. Our RTI submission for the pay period up to 31 October 2020 was submitted on 29 October 2020. Does this mean that new starters on the October payroll are eligible or ineligible?**

That is correct. They are eligible.

**29. Are there any issues with putting employees on furlough, where an employee has UK residency but has recently been working abroad due to COVID?**

No if they are subject to UK tax they are eligible.

**30. Can an employee travel home to an EU country while being paid CJRS 3 and be included in a furlough claim?**

Yes if still UK tax resident and on the payroll as at 23 September 2020.

**31. I have a client with an employee self-isolating. She is working from home but only doing about 50% of her usual hours because she can't do 100% of her job from home. Can she be flexibly furloughed?**

Yes.

**32. Company pays salary monthly. New employee joined 1 October 2020. RTI was sent on 30 October 2020 for pay period from 1 to 31 October. Can employer claim furlough for the employee from 2 November 2020?**

Yes.

**33. If an FPS is done for payment date 31 October and we have a new starter who came on payroll 1 October would they qualify for furlough as the cut off was the 30 October**

It depends when it was sent, it is about the submission date not the payment date so if submitted on or before 30 October 2020, they are eligible.

**34. I have a client who I registered for PAYE early September with the first payroll as 31 August. However, the PAYE details came through on 5 November so can anything be done? No FPS was submitted but only because the PAYE reference didn't come through.**

I would talk to HMRC on the webchat as that should be possible.

**35. Long term employee in hospitality sector made redundant 31 July 2020 after a period on furlough and re-employed on 16 October with first payment on 31 October. Do they qualify for furlough this time round?**

No, as they weren't on an FPS sent by 30 October 2020 (unless you're saying that the payment for 31 October 2020 was reported by 30 October 2020).

**36. If you pay employees who are not furloughed overtime for working extra hours are you still OK to claim furlough for other employees**

Yes.

**37. A client, which is a seaside restaurant, has employees who were furloughed initially at the end of March 2020, then brought back to work in July 2020 until the start of September 2020, but then put ON HOLD; not furloughed (an employer decision). Can they now be furloughed under the CJRS extension scheme from 1 November 2020 and would furlough reflect what the employees had previously been furloughed for?**

Yes they can and pay used for schemes 1 and 2 applies.

**38. Just want to check that the CJRS 3 is open to all employers and there is no restriction for payrolls 'under common control' ie the rules you use to determine whether you are entitled to claim for Employment Allowance.**

Yes. It makes no difference if the PAYE scheme is connected, each scheme can claim.

**39. If there were employees added in October but RTI was not filed by 30 October, is it possible to claim the CJRS for those?**

No.

**40. Can a business which is planning on incorporating from 1 January 2021 still claim furlough from January - March 2021 on its partnership PAYE scheme? That is transferring as a going concern?**

Yes.

**41. We had an employee join in September who was not eligible for any furlough under the old schemes, and therefore is only currently working three out of her five days per week due to lower demand. Can we now claim for the two days she is not working under the new furlough scheme? As her earnings reported on the RTI's are only for three days, will HMRC query the salary figure we use if we use her normal monthly figure if she were to work 5 days in the basis of our calculations.**

So if she is fixed rate I would suggest the last pay before 30 October 2020 forms the reference pay. You can't claim what hasn't ever been paid as otherwise any employer could say 'my zero hours person is actually on a 40 hour a week contract but not working it at the moment!' The furlough grant is based on fact not what might have been.

**42. If someone was on notice on 20 October and this ended mid-December. you stated anyone on notice from 1 December 2020 cannot be claimed for. Does that mean they can in November?**

Yes.

**43. Are there any restrictions on claiming furlough in full and the employee working for a 3rd party?**

No, as long as they are not connected employers.

**44. You state 'Nobody can be on any type of notice from 1 December 2020 and claimed for'. So does this really mean that someone on furlough can themselves submit notice to leave under their contract of employment (eg, to go to another job) and then when they are not working in that notice period the employer has to pay them in full at full contracted pay and can't claim under CJRS3?**

Yes that is what the contract/employment law requires.

**45. We have a client who in March 2020 payroll had no salary submitted by 19 March so did not previously qualify and then for the first few months of 2020-21 have had a salary processed but due to COVID now again on no salary. Does this mean they do not qualify, as no salary at 30 October?**

They qualify if something was reported between 20 March 2020 and 30 October 2020 and they have not had a date of leaving reported.

**46. I have a client that ceased trading on 31 October and issued P45s, Payroll wasn't shut down yet, but the new business that took over the trade does not qualify for CJRS as started 1 November 2020. So my client is asking if he can continue and run the payroll (despite not trading) just for the one staff that is being furloughed?**

Yes, we believe so as that is the same as re-engaging someone into a role that they will subsequently be made redundant from again.

## REDUNDANCY

**47. If you have made an employee redundant in October and paid redundancy, can you re-employ them and put onto furlough. What do you do about the redundancy that you have paid to them?**

You can re-employ them from the 1 November as that's the earliest date that people could've gone on to furlough. If they're going to be made redundant again at the end of the re-engagement then there will be no impact on the original redundancy pay but there is unlikely to be any additional amount due as it won't be continuous service. If they're now going to remain with you in a new post then the redundancy pay will become taxable so it's a huge consideration.

**48. Please clarify, if someone is made redundant 1 November and there is a three-month notice period - so leaving date 31 January 2021, it looks like you can claim furlough in November but not in December and January. Is that correct.**

Yes.

**49. We are about to make someone redundant - on 30 November probably. Can we re-engage him and furlough him? We made three staff redundant in October. Can we re-engage them and furlough them?**

Yes if they were employed as at 23 September 2020.

**50. I don't understand how we can re-employ someone who was made redundant. Redundancy means a job no longer exists, so if we re-employ them how can we justify that, when the job no longer exists? What would their job title be?**

You are just re-engaging them in their old job and will still make them redundant again, a) make sure there is no additional redundancy required re longer service if the service is continuous; that won't be the case if there is a break in service? b) if you take them back, as there is now a new job they can fill, the redundancy pay may now become taxable. So think this through. We are not able to advise on all the employment law considerations.

**51. You just mentioned viability...how can we be allowed to re-employ staff we have made redundant if their jobs weren't viable? And if we can re-employ - is there a cut-off date for making them redundant?**

I would suggest 31 March 2021 as the employer will have to pay for them after that date. The scheme allows for re-engagement as an alternative to Universal Credit. It's still government funding. Do remember that you can't claim notice pay from 1 December 2020, so any employer taking on former employees will have to fund any notice/holiday pay that is due.

**52. A client made a furloughed employee (his son) redundant on 30 October 2020 in anticipation of the CJRS ending on 31 October 2020. Following the extension of the scheme, the son has been re-hired and immediately put on full furlough again. The intention is to keep him on furlough until 31 March 2021, claim the CJRS grants and then make him redundant again when the scheme closes. Is this permissible, given that the employee will definitely be made redundant again? It certainly appears to be against the spirit of the scheme, the intention of which was purported to be the prevention of redundancies.**

Yes it is. He would be on Universal Credit if not so it's just higher government funding administered via the employer.

**53. Hi, if we need to re employ the employees who were made redundant, what is the process? ie will it be continuous employment or as a new starter for fixed term? Will it affect the notice period pay, holiday accrued?**

It depends when they first left. It will only be reinstatement if they left on 31 October and are furloughed from 1 November, otherwise it's a re-engagement which is new service for holiday, notice, redundancy etc although there are very specific rules on when a break in service is ignored, for example in respect to unfair dismissal rights – we are not in a position to advise on all the employment law considerations.

**54. An employee with 19 years' service was given notice of redundancy mid-September and will be made redundant mid-December. Once that process is complete, can the company re-employ the individual (on a different salary) to take advantage of the new rules for December and January (and perhaps longer)?**

Yes, but would suggest then there is no redundancy unless gap in service to demonstrate totally new role. So be careful that it is a true redundancy or redundancy pay will be taxable. They also can't be claimed for from 1 December to date of leaving as they are on notice at that point so ineligible.

**55. Wondering what happens for someone who worked from 2019, was furloughed for 6 weeks on original scheme but left on 16 October with P45. Later was brought back on 7 November to go on full furlough - what is reference pay for this employee? original March 2020 or September 2020?**

March 2020.



## DIRECTORS

**56. An employee with 19 years' service was given notice of redundancy mid-September and will be made redundant mid-December. Once that process is complete, can the company re-employ the individual (on a different salary) to take advantage of the new rules for December and January (and perhaps longer)?**

Yes, but would suggest then there is no redundancy unless gap in service to demonstrate totally new role. So be careful that it is a true redundancy or redundancy pay will be taxable. They also can't be claimed for from 1 December to date of leaving as they are on notice at that point so ineligible.

**57. Are directors who report monthly based on February/March salary or September 2020 salary which might be higher**

It will be the September monthly salary if they have been paid on a monthly basis this tax year.

**58. For directors, if you take £2,500 from the annual pay, would you claim this for November through to March if the business still has been able to operate.**

No, as then it is a flexi-furlough claim because if the business is operating, then the director must presumably be doing some work? You need to evidence what hours are being worked to allow the business to function and pro-rate those to the usual hours at this time of the year from last year's diary of appointments/invoices.

**59. If a director was receiving an amount in February, which they were using for furlough calculations previously, if they are now taking more in pay, is the furlough still worked out based on their original amount?**

Yes.

**60. What can directors do and be on furlough?**

The same as anyone else. If on full furlough nothing that makes money for the business, so statutory duties only such as accounts and payroll. If flexi-furloughed they can make money for the business during working hours, but statutory duties only in unworked hours.

**61. Director pay March 2020 was £720. Employee pay March 2020 was £720. In April it increased to £795. Was furlough due on £720 or £795?**

Sorry not sure what this means. If the director's March pay was reported pre-19 March 2020 it is £720. If they have had a pay rise in April it makes no difference. If they weren't eligible first time as not reported until after 19 March 2020 or later and pay is now £795, that will be the reference pay either because April was the last time they were paid or if they have had that amount each month it will be September's pay of £795?

**62. I took over a new client whose previous accountant had the directors on an annual scheme, so they weren't eligible for CJRS 1&2. I moved them onto a monthly scheme but only in September 2020. Can I use this month for the reference pay?**

Yes.

**63. If a director of an OMB was paid monthly in both 2019/20 and 2020/21 and received a pay rise from £715 to £730 and claimed under CJRS1 and 2, is their reference pay for CJRS3 £715 or £730?**

It depends when the pay rise was. If it was £715 for the pay period reported pre-19 March 2020, that is used. If £715 was reported after 19 March 2020, it will be £730 as this will have been the monthly payment in September and that is used as they weren't eligible for schemes 1 and 2.

**64. Director on fixed salary of £8,500. No pay in 2019/20 due to cash flow, salary of £2,500 put through in both April and May 2020. Nothing since. Furlough claim = 80% x £2500?**

I would suggest £2,500.

**65. If owner-managed director paid monthly 2019/20 and 2020/21 what is the relevant salary, please?**

It will be the last monthly pay reported pre 19 March 2020 as they were eligible last time even if they chose not to be furloughed. They are eligible this time as they have had pay reported between 20 March 2020 and 30 October 2020.

**66. By claiming furlough for directors is there still a risk that these directors could be considered to have a contract of employment and therefore NMW/NLW requirements could be forced upon them in the future for actual hours worked.**

No, office holders are not subject to NMW and that is embedded in the NMW regulations. Claiming a government grant, which is what furlough is, doesn't read across to employment status.

**67. Directors - what about quarterly - is there the same annual argument as annual - £2,500 per month?**

Yes either £2,500 for the month the payment is paid or £2,500/3, the jury is out for now.

**68. Director paid for many years but went to work elsewhere for three weeks October to 7 November. P45 complete, then decided to come back to his previous company. However this company was not able to open because of lockdown so will be furloughed – a) Is it ok to furlough? b) Do we use September pay or March pay. He takes monthly director pay?**

Yes, he had to be employed on 23 September 2020 and he was eligible first time, so March pay is used.

**69. If a director was on an annual payroll and now they can be furloughed do we have to switch them to monthly for November payroll onwards?**

Yes, you can furlough them if their annual pay was reported pre 19 March 2020 and some pay has also been reported between 20 March 2020 and 30 October 2020. If nothing was reported pre 19 March 2020 they are now eligible if something has been reported since and by 30 October 2020. You do need to pass on the furlough claim as soon as possible, so you will have to run a payroll and as soon as you do that for December, as well as November, HMRC will cancel the annual scheme status. Once you stop any claims, if that is before April 2021 you will need to do a Nil EPS if there is a month where no pay is due. For 2021/22 you need to contact HMRC to discuss returning to an annual scheme that is what you wish to do.

**70. If you are claiming for a director who is now eligible to claim from 1 November, what pay reference period would you use if they have had a zero pay each month from April to October and a NIL FPS submitted to HMRC. Can you use a monthly amount based on their annual salary for 2019/20? Their annual pay date was 31 March 2020, but this was not submitted to HMRC until June.**

So they had some pay reported between 20 March 2020 and 30 October 2020 so they are eligible. The June value is the reference pay. Clearly it's not the case they had an nil FPS April-October if they were paid in June as that was when it was taxable.

**71. A director has been paid as normal up to the end of October but has now gone on furlough. He lives in Wales. Can we make a new claim for him? Are you still allowed to pay bonuses that accrued before March 2020 to furloughed people?**

Yes to first part. Yes you are entitled to pay bonuses; they have no relevance to the furlough calculation as they are discretionary.

**72. Do furlough payments paid between 20 March 2020 to 30 October 2020 count as an earnings payment to allow directors to take part this time even if no other pay this tax year?**

Yes.

**73. In terms of the directors, if they were on payroll until 28 February 2020 and then furloughed, would they be eligible for scheme 3?**

Yes, if some earnings were reported from 20 March 2020 to 30 October 2020.

**74. Directors paid £12,000 per year, on monthly pay of £1,000, but payslip reports 80% i.e. £800 per month furlough pay. Would we use the £1,000 or £800?**

If the director has been furloughed under schemes 1 and 2 then the pre 19 March 2020 reference pay is used which is what is implied if there has been furlough pay so far. If not eligible for scheme 1 then the reference pay for scheme 3 is the last pay period before 30 October 2020.

**75. Director of PSC, no other employees, low wage. No claims made by the employer under CJRS 1 and 2 because they couldn't claim to be fully furloughed in April, May, June as needed to do some work re marketing/promo etc. If claim made under CJRS 3 as flexi furlough what is the basis of the reference pay - old CJRS 1 and 2 rules or new CJRS 3 rules? ie, are they treated as 'eligible' for CJRS 1 and 2 or not?**

If they were eligible for schemes 1 and 2, even though not furloughed, the pay pre 19 March 2020 is still used as the reference pay.

**76. Can a claim now be made for directors paid once, on a month 12 basis. An RTI has been submitted post-March 2020 re 2019/20.**

Yes, assume you mean post 19 March 2020 and pre 30 October 2020.

**77. As we need to start advising our directors who were not eligible before as to what we can claim for them now, I am unclear as to whether this should be £2,500 (cap based on £8,000 paid in March 2020) or 1/12th of this being £666.67?**

I would suggest you make a claim by 14 December for £666.67 if they are eligible then increase it if/when we get a ruling from HMRC.

**78. Should directors be subject to flexi furlough calculations as for other employees?**

Yes if they are working.

**79. Can you clarify the director position. I filed the RTI on 12 March for payment of earnings on 31 March Does this qualify for scheme 3?**

It does but only if anything was also filed from 20 March 2020 to 30 October 2020 too.

**80. Directors flexi furlough. How does this work if don't have fixed hours of employment but are say working on average two days a week?**

You need to try to evidence their usual hours, this time last year as compared to what they are doing to run the business this year.

**81. HMRC told me only claim 1/12 of director annual salary each month even when single annual pay pattern - and up to max. of annual salary. Cannot give pay increase. Might this be different for CJRS 3 and how will you confirm this to attendees?**

We will share if we get a decision from the HMRC policy team. Sadly, not everything said on webchat is correct but clearly if you have a copy then work to that.

**82. Close company - one Director recommenced pay on RTI in September 2020, no pay prior to that in current or prior year, but were an employee. Paid for September and October, but not previously eligible. Can they be claimed for as furloughed in November?**

Yes, as pay reported pre 30 October 2020.

**83. Hi, can a director who has not been on payroll before qualify for furlough if he/she was paid a salary in October 2020?**

Yes if reported by 30 October 2020.

**84. If you have a director who is processed an annual salary of £8,632 with an RTI on the 31 March 2020 (for example), from HMRC's point of view they were:**

For directors who are processed an annual salary of £8,632 for 2019/20, if for example the RTI submission was 31 March 2020. My understanding is that they satisfy the RTI requirement ie, they are on an RTI between the 20 March 2020 to 30 October 2020, but as they were not eligible for CJRS the first time round, you have to use the new rules which is earnings between 6 April 2020 and the day before furlough, surely their earnings would be £nil and therefore no claim can be processed?

Why are they nil if £8,632 was reported 31 March 2020, the fixed pay rules say last pay period before 30 October 2020, which is the 31 March 2020 payment. Only variable pay employees use earnings since 6 April 2020.

**85. What about directors on an annual scheme who had a submission prior to 20 March 2020 but nothing since?**

They are not eligible for scheme 3.

**86. Director paid £719 April to July 2019, then £100 pcm April 2020 onwards. How much furlough claim?**

They have earnings for 2019/20 reported by 19 March 2020 so they are eligible for schemes 1 and 2, and are eligible for scheme 3 as they have earnings reported since 20 March 2020 but the reference pay remains as £719 for scheme 1.

**87. We have directors who work one or two days a month, like a plumber. We've been applying for pro-rata furlough monthly payment for Directors, not flexi furlough, just a claim based on number of days/calendar days. Is this OK?**

So this is a full furlough, I assume based on the fact this director, unusually, has very low usual hours.

**88. Just mentioned an increase in salary-have to use the earlier salary for people who were eligible. What about annual directors who were not eligible who now get paid monthly and a higher amount?**

If they weren't eligible for schemes 1 and 2 then it's the last pay period before 30 October 2020.

**89. Director on furlough since March, but unable to claim because no RTI until 31 March 2020. Subsequently paid for couple of months (although not working) until it became clear she couldn't claim. Can she now claim and how much?**

If there is pay reported since 20 March 2020 up to 30 October 2020 she is eligible based on last pay reported prior to 30 October 2020.

**90. Annual directors - if payroll processed annually 28 March 2020 (£8,632), then an RTI submission 30 April 2020 to try and make a claim under CJRS (which subsequently failed) does this mean the last pay period is based on the April 2020 (say £732)**

It is based on the last pay reported before 30 October 2020, so that will be April if nothing more reported.

**91. How does an owner managed director calculate their normal hours given they probably used to work varied hours?**

From diaries, invoices anything to evidence previous activity.

**92. A freelancer director who was not eligible for CJRS 1 & 2 paid himself a salary from his company until August 2020. He had no work during this time. He then got himself a employed position and stopped taking salary from limited company. I am pre-empting him asking me if he can claim furlough from his limited company position under CJRS 3?**

If he is still employed in his own company as at 30 October 2020 he can claim as he was eligible for schemes 1 and 2, had earnings reported since 20 March 2020 and was not resigned.

**93. Regarding annually paid salaries for directors, if the FPS was submitted on 24 March 2020, therefore not being eligible before, they are now eligible under the furlough extension from 1 November 2020. Would the reference monthly furlough claim be based on the March 2020 salary still, for example £719 per month?**

It depends if they have been paid since March, if not use the March salary, if earnings since then, it will be the last period paid pre 30 October 2020.

**94. Company with 1 director, who was an employee, was paid a final salary in July 2020 as company and payroll scheme closed down. In November 2020 company now restarted and new payroll scheme to be set up. I presume that no CJRS can be claimed as director as he was not an employee on 23 September 2020?**

Correct.

**95. Were dividends / capital distributions not permitted under CJRS 1 or 2 ?**

They were permitted, but discouraged. They were due to be outlawed for the Job Support Scheme hence being mentioned in the webinar.

## **ANNUAL LEAVE**

**96. An employee furloughed from 05 November 2020 to 21 November 2020 (21 November 2020 is pay period date) includes nine days holiday. What is the furlough claim and the actual pay?**

The furlough pay is calculated from the 5 November to the 21 November but within that nine days' worth of pay must be paid at 100% using the new holiday pay regulations that came in in April 2020.

**97. If an employee is furloughed for one day out of five a week, but then takes a whole weeks holiday in the month. Does the whole week of holiday count as furlough or just 1/5 (as it would if she was working)?**

The holiday period is as it would be if she was working but that is only used to calculate the holiday pay due within the furlough period. So calculate the furlough first then add the holiday top up.

**98. Can holiday hours be included in Furlough claim and if so how are the hours worked out in relation to usual hours/furlough?**

Establish the holiday period and the pay for that period and that is paid at 100% ignoring the furlough agreement, the rest of the period that is unworked is furlough hours and pay.

**99. Is there guidance somewhere on how to calculate those holiday top ups for people on furlough?**

BEIS provide guidance on holiday pay on [gov.uk](https://www.gov.uk).

**100. Do furlough weeks count towards an employee's average pay for holiday calculation?**

No if it was full furlough, yes if flexi furlough as some work was done.

**101. Can we calculate employee's holiday based on the current salary as government guidance mention that employees should not be financially worse off taking holiday?**

Yes, you must.

**102. For variable employees and holiday pay, when looking back 52 weeks do you exclude weeks which have flexible furlough ie, worked and non-worked elements**

If there is some work in a week it is included, only full furlough weeks are ignored as there is no remuneration.

## CHANGING HOURS/WAGES

**103. What about people who are an hourly rate pre 19 March 2020 but they have worked many more hours over the summer period. Do we have to pay them the old furlough hours not the new hours? eg for bar staff**

Yes you have to base their hours and average on the old roles if they were eligible for schemes one and two because they had earnings reported pre-20 March 2020. There will definitely be winners and losers because of this approach and the government accepts this as the policy is intended to replicate people's pre-COVID level of earnings.

**104. We had an employee that was eligible for first scheme who was furloughed. They then left June time and were P45ed. Restarted in September. Do we use February as their reference period?**

Yes you use the February reference pay as they were eligible for the first scheme.

**105. If someone has had a pay increase or decrease since the last time they were on furlough can we use the new rate?**

No.

**106. For hourly paid employees if they now work more hours than when they were last on furlough can we use the increased average hours?**

No, you continue to use the previous hours' calculation you used for schemes 1 and 2 if they were eligible for those schemes.

**107. If somebody reduced their hours so therefore their salary after April, would their reference hours/pay be the one before the reduction**

If they were eligible for schemes 1 and 2 you continue to use the pre 19 March 2020 reference salary.

**108. If a staff member (previously furloughed in April to June) moved from full time to part time in October, does the employee still have right to the full time based furlough calculation based on last year?**

Yes.

**109. If the weekly hours have changed since end August 2020, and they were eligible on the first furlough and furloughed up to end August 2020, what hours do I use for the usual hour calculation for November? Is it the hours worked and pay worked at 19 March 2020?**

Yes.

**110. Hi, what happens if someone's hours increased significantly as they went to full time from part time, but had previously been furlough based upon the part time hours? Is the increased hours a new contract of employment and furlough based upon that or is it still based upon the old part time hours?**

Old part-time reference pay; employer can top up if they wish.

**111. If you moved from annual to monthly pay from April, but have not received a salary each month as unable to trade. Can you use the 2019/20 annual salary as the reference period for claim as September pay was zero?**

If it was reported after 19 March 2020 yes, if no pay reported since 20 March 2020 they aren't eligible.

**112. I have employees who were put on the first furlough. They have subsequently been taken off furlough and received a salary rise. They are now back on furlough. We are unsure whether to pay the staff 80% of the new salary or 80% of salary as at March 2020. I believe that our claim to HMRC will be 80% of the March 2020 salary**

Yes.

**113. If an employee was employed pre March 2020 and was furloughed, but then has increased standard hours since is there any way that they can use their new hours. My understanding is that if they were eligible for earlier furloughs there is no way the new working hours can be taken into account?**

No they can't increase their hours.

**114. If Cathy's last annual pay had been March 2020 instead of September, and this had been £25,000, would we use £25,000 as the reference pay for furlough from 1 November?**

But Cathy wasn't employed then. If she had been employed pre 19 March 2020 and earnings of £25,000 were reported by then it would be £25,000/12 reference pay.

**115. What happens if they have reduced their hours, since July do they get furlough based on the full time hours?**

If they were eligible for schemes 1 and 2 you use the pre 19 March 2020 pay whatever has happened since.

**116. When an employee has basic hours say 45 per week, but works regular overtime that is significant but not guaranteed, I believe can (should?) average their income to get an hourly rate based on their basic hours is that correct? So it will boost their furlough pay. But it doesn't affect the regular hours calculated for that employee?**

A fixed rate employee who does lots of overtime can be classed as variable pay so you then use all their hours and pay to work out the appropriate furlough pay following the guidance.

**117. Should the furlough rate be increased for those paid minimum wage levels?**

No if they were eligible for schemes 1 and 2.

**118. For variable pay employees with pay periods from mid-month to mid-month, how do we need to calculate the average working hours? And the check of pay vs same time last year? Is it mandatory to place variable pay (casuals) on furlough or flexi furlough or is it at the discretion of the employer?**

If employee was eligible for schemes 1 and 2 you use the variable pay calculation of higher of average pay for 2019/20 v corresponding period last year. If newly eligible it's pay this tax year/calendar days worked. It is the employer's decision to furlough; the employee can't demand this.



**119. If there is an apprentice who was claimed for in 1 and 2, but whose income subsequently increased under minimum wage rules, are their furlough amounts still based on the old reference pay amount?**

Yes.

**120. I have employees who were furloughed until September and on resuming employment in October agreed lower working hours but also received a pay increase. So fixed monthly salary adjusted accordingly. Does CJRS simply go back to conditions in 2019/20?**

Yes.

**121. What happens if an employee's contract has changed since they were first furloughed to reduce hours at employees choice or increased due to a new fixed role due to the virus?**

If doesn't alter the reference pay for schemes 1 and 2.

## **NEWLY FURLOUGHED EMPLOYEES**

**122. If someone started mid oct, will it be 80% based on full monthly salary, not just what was paid in Oct?**

Yes you prorate up based on the daily value to what would've been a full month or you take the total earnings from the start date to the day before furlough and divide that by the calendar days to get a daily value that you can then multiply by the number of furlough days.

**123. What if the newly furloughed employees were actually eligible for the first scheme but not furloughed. Is this based on the March pay or October pay?**

Pay reported pre 19 March 2020.

**124. What is the condition for claiming furlough under this new basis. My client didn't furlough previously, but her business has been significantly affected and she would like to claim this time. Is it sufficient that her business has been affected by COVID?**

Yes it is, the business needs to be impacted by COVID-19.

**125. What if new employees were taken on during the CJRS 1, but we need to put them on furlough under CJRS3?**

If not reported as starter until after 19 March 2020 you can, and you use last pay pre 30 October 2020 if fixed pay, or average since 6 April 2020 if variable pay.

**126. Please could you confirm the period you use to calculate average pay for people who were furloughed in July and have returned**

The reference pay calculation you used for the July furlough.

**127. Is a new agreement needed for an employee who was still on furlough on 31 October 2020 if they had not already had a letter saying it would be ending ie their agreement was open ended ... so can the existing agreement just rock on or is a new agreement needed anyway specifically because it is v3?**

New agreement needed.

**128. If employees were eligible for CJRS 1 but the employer was not (as publicly funded) but circumstances have now changed as the public funding stopped in the summer (but the business is continuing) do we use 2019/20 as the reference pay or October 2020?**

I would suggest the pay pre October 2020 as there was no eligibility in scheme 1 based on the employer's circumstances.

**129. What pay reference should be used for an employee who was previously eligible for the scheme but had not been previously furloughed?**

Last pay pre 19 March 2020 for fixed pay and higher of average over 2019/20 or corresponding pay period for variable pay employees.

## **CALCULATING AVERAGE WEEKLY EARNINGS**

**130. With the average calculations for 2019/20, is this still the average up to the day before they were furloughed, if this was before 5 April 2020?**

Yes.

**131. Can you calculate the furlough day based on the working days in the calendar month rather than the total days of the month?**

No.

**132. You mention the payment date for RTI. We always pay on the 25th of the month but pay is for the full calendar month. We do always put the 25th in the RTI, is this correct for Universal Credit?**

Yes and even in December if you pay early.

**133. With the England lockdown closing (possibly) on 2 December and potentially some furloughed employees returning on the 3 December, do we still have to put in a claim for a calendar month, even though it may be uneconomical to process a claim for 2 days for December?**

It's up to the agent/employer. A claim can be made as an orphan claim for 1st and 2nd as a claim was made up to 30 November.

**134. Employee on £800 a month fixed. On full furlough, so is the furlough rate  $800 \times 80\% = £640.00$  please? Furlough to continue in December.**

Yes.

**135. What period of time can the seven-day furlough cover, ie three days one month and four days another month?**

You'd have to have a seven-day furlough prior to any orphan period of less than seven days.

**136. If the notice period starts in November and continues into December can you claim for the whole notice period or do you disallow the December element?**

Disallow December element.

**137. Can you please explain the 261 that you have divided the yearly pay by**

That's an example of how employment contracts dictate daily pay for employees, either 260 or 261 working days. Furlough is always done on calendar days.

**138. If I had an employee since January 2018 and never furloughed - can I put them on furlough from say December 2020 for the first time - ie, after 13 November?**

Yes but you use the pre 19 March 2020 reference pay.

**139. If variable pay employees are paid a month in arrears (ie, paid for October hours in November), which hours do you use for calculating variable pay furlough for the month of November?**

It's the last pay period pre 30 October 2020, it doesn't matter when the hours were worked it is when they were paid.

## **MATERNITY LEAVE**

**140. How do I calculate AWE for variably paid employee already on furlough going on Maternity leave in December?**

The same as you have since 25 April 2020 when the law changed; you use 'normal weekly earnings' as opposed to 'average weekly earnings' so you have to take a view of what their earnings would have been had they not been furloughed.

**141. If someone is taking maternity leave and will be on SMP and the business has to close, can the employer claim Furlough at 80% of their pay and top them up to the amount to cover full SMP due?**

SMP is reclaimed as normal on the EPS. You can claim for contractual maternity pay only if there is any in your Ts and Cs. If you delay the start of maternity leave then you can be furloughed until then.

**142. Where a director who was on maternity leave till August 2020 and received SMP, started work in mid-August and is now furloughed in November 2020, what is the basis of calculation please...variable or fixed pay?**

So she may have been eligible last time, if so what was the SMP paid in the last pay period pre 19 March 2020, as that will be the reference pay? if she wasn't eligible, as no SMP or salary was reported until after 19 March 2020, it will be the last payment pre 30 October 2020. So, whatever she received in September, assuming she has gone on to monthly pay, if not, it will be her last payment of SMP that forms the reference pay.

**143. What is the position regarding a lady on maternity pay?**

If she is employed as at 30 October 2020 she is eligible.

## **CORRECTING MISTAKES**

**144. Can you deduct an overclaim from CJRS 2 in a CJRS 3 claim?**

I was quite surprised when I went to do a claim for November that it asked me if it was an overclaim so it does seem as if you can repay a CJRS 2 claim this way by reducing the CJRS 3 claim.

**145. I didn't claim for employers' NI in the early months because the NI was covered by Employment Allowance (EA). The company will pay more than £4,000 employers NI in the year. Is there any way to reclaim under the original CJRS. HMRC told me they were 'working on this'.**

You can't increase a claim for the scheme that ended on 30 June 2020, but you can claim using EA. You wouldn't be able to have the £4,000 EA and the CJRS NI so if you have claimed £4,000 under EA you haven't lost out.

**146. NIC Employment Allowance: Client claimed entitlement but due to possible lack of revenue, there may be insufficient funds to pay salaries upto the threshold. Will the EA already claimed have to be repaid?**

EA is claimed based on actual salaries paid out. If the employer has made a claim and not actually paid employees then absolutely it must be repaid as that is fraud.

**147. I saw that a claim can be amended within 28 days if you underclaimed. Is that an amendment which the claim portal will cater for or does it require contact with HMRC?**

We think it will be contact with HMRC.

**148. Would there an opportunity to adjust overpaid in October in the 'new scheme' in November ?**

Somewhat surprisingly it appears that this is possible even though they are separate schemes.

**149. Is there any update on the interaction between CJRS (version 1) and Employment Allowance (EA)? I was told back in April not to claim employers' NI under CJRS as it was covered by EA. Now I understand it is possible to claim both provided the total claimed is less than the total due in the tax year. But there doesn't seem to be a mechanism in place to amend my early claims. Do you know if this will be possible, or have we just lost out by following the rules at the time, which subsequently were re-interpreted?**

You can claim £4,000 under EA and CJRS but not both for the same period. So if you claimed nothing under CJRS you can claim £4,000 under EA.

See our most recent guidance on this at [icaew.com/insights/tax-news](https://www.icaew.com/insights/tax-news)

**150. Employees are paid net whereas CJRS claims are gross, so it may appear to them that they have been underpaid. How will this be dealt with by HMRC via the Personal Tax Account (PTA)?**

Not even clear at this stage if the PTA will definitely be used, whether it will show actual value claimed, or just an indication that a claim has been made in relation to the employee as remember claims for some 100 employees do not have any values at employer level. That said, employee payslips show both the net and gross so it should be perfectly possible for an employee to work out what has been claimed and what has been paid. Many employers show their furlough pay separately as part of the build up to gross, even though this is not mandatory.

**151. We didn't include a factor in the reference pay last time as it was not conclusive as to whether we could include it. It now seems clear that we could have, can we update the pay reference now?**

Yes, the problem will be what HMRC say about the first claims so absolutely get it right now.

## CHRISTMAS

**152. Xmas hols - say an employee is flexibly furloughed one day per week either side of Xmas, would it be acceptable to furlough them for the full two weeks of Xmas or just the normal one day per week?**

Two weeks, but the employer pays 100% for those weeks.

**153. Hi, If company is closed between 24 December and 1 January, how can I exclude these days?**

You don't need to exclude them if people, are furloughed either side as it's then holiday. If they aren't it's one furlough period to 23 December and one from 2 January 2021 onwards. Remember you are needing to prove that the business has been adversely affected, so was that the case between the 24 December and the 1 January?

**154. If we plan to do part time furlough for most staff in January as we expect it to be quiet, can we furlough full time most staff for the last two weeks of December which will be a Christmas shut down?**

I would suggest to claim for Christmas you need to be able to demonstrate the business is impacted in December too.

## GUIDANCE, RESOURCES AND HMRC

**155. Any draft furlough scheme letters for employees to sign?**

That is an employment law matter, not for the Tax Faculty. ACAS provide a template and we link to that from [ICAEW's COVID-19 hub](#).

**156. Hi, please can you confirm if ICAEW is due to release updated furlough engagement letters?**

Yes in due course as mentioned in the webinar.

**157. What advice has the ICAEW received to confirm employers are obliged to follow the guidance given by HMRC or the direction? In some cases they are very different. My view is that the direction applies to HMRC and the guidance provided by HMRC is what employers should be adhering to.**

Compliance will be based on the law; it has to be. Guidance is only an interpretation of the law.

**158. I rang the Coronavirus Helpline who advised it is 19 March 2020 for people who have had a pay rise, however, they did tell me that the national minimum wage (NMW) had to be honoured.**

That is not the what the legislation says. Furlough pay is based on reference pay as at 19 March 2020 ie, pre the April NMW uplift. It is up to the employer if they want to pay the NMW uplift for furloughed hours, but that is not required unless they want to as it would be at the employer's cost. For worked hours the new NMW applies.

**159. Where are they planning to publish the information regarding employers who have claimed?**

On gov.uk.

**160. Any information on when furlough claims will be visible in employees' personal tax accounts?**

From December 2020.

**161. How will they know what has been claimed for each employee as only a total is input or is that changing with the new scheme?**

That is a very interesting point and it seems predicated on the fact that only in the over 100 claims is there an entry per employee. Possibly it suggests that the smaller claims are not likely to be reported at all, or not in detail, and HMRC will just indicate that a claim has been made in relation to the employee with no values shown.

## **GENERAL BEST PRACTICE**

**162. How much notice do we need to give an employee before we furlough them?**

Just that the agreement is in place before furlough starts.

**163. Does it matter when the FPS is actually filed or is it the pay period date that matters?**

The pay period is irrelevant. It's all based on the filing date, as with schemes one and two.

**164. What has happened to the old CJRS bonus in January 2021? When will we know what will replace it?**

It's gone. The government has said it will announce a replacement in due course once it has assessed the prevailing economic conditions.

**165. Re furlough agreements in place to start: does this mean signed letter before it can start or can it be a verbal agreement followed by a letter documenting that?**

No it needs to be in writing before furlough start date, so email at least.

**166. Do you have to show 'furlough pay' on payslips if you are paying full pay for those on furlough?**

No but it is helpful for transparency purposes and to show you have paid all the claimed money over.

**167. Can you only make one claim per calendar month or if the employee's normal pay day is fortnightly can you claim in advance for each two-weekly period?**

You can divide the calendar month into minimum blocks of seven days. A shorter claim period for the remaining days is allowed only where these days are at the beginning or end of the month. So, yes, two-weekly periods are permissible and claims can be made 14 days in advance of each period end date as we have for schemes 1 and 2.

**168. Do you need a new furlough letter (in November 2020) to an employee, who was furloughed to up 31 October 2020 and was then furloughed again, from 1 November 2020?**

Yes.

**169. Does an employer have to pay 80% of an employee's contracted pay / hours if their reference period is lower?**

Not for furloughed hours, only worked hours require the contractual rate to be paid.

**170. Annual payroll - if pay was £8,632 in March, would the cap of £2,500 in November be a one off or would they be able to continue to claim £2,500 in December, January etc?**

Each month.

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Kate Upcraft is a renowned lecturer, consultant and writer with honed networking and lobbying skills developed with government and industry figures. She has worked on numerous payroll audits and consultancy projects across numerous industry sectors using her extensive industry expertise. With ever changing, new and complex obligations being devolved to employers Kate is increasingly sought after for her consultancy skills by both agents and employers. Using her experience of managing one of the largest payrolls in the country Kate also advises on developing high performing payroll and HR teams.

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