

This document details flexible furlough and changes to the Coronavirus Job Retention Scheme.

THE MAIN CHANGES

Q. When do employers need to start contributing financially to the CJRS?

From 1 August 2020. Initially, employers are only required to pay employer NICs and minimum pension contributions in August. However, from September, you are required to start paying a contribution towards wages too. This table summarises the phased changes that are coming:

	July	August	September	October
Government contribution (E'er NIC & pension)	Yes	No	No	No
Government contribution (wages)	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875
Employer contribution (E'er NIC & pension)	No	Yes	Yes	Yes
Employer contribution (wages)	Nil	Nil	10% up to £312.50	20% up to £625

The amount received by the employee will not change at all for the duration of the scheme, remaining at 80% of their salary up to a maximum of £2,500 per month. Where the money comes from is changing, with the government contributions decreasing in line with the above and the employer gradually making payments too.

Q. Can I still top up pay to 100%?

Yes, that is still permitted. You can top up pay to 100% levels if you wish.

Q. Is the scheme still open to new entrants?

Not really. The scheme is closed to new applicants from 30 June. In order to make a claim from that date, employees must have been furloughed for a minimum three-week period at any time prior to 30 June. That means the last date to furlough someone for the first time and still make a claim under the CJRS was 10 June 2020.

The only exception to this is employees currently on certain forms of statutory leave. Those returning from parental leave now can still be furloughed, even if they have not been for a full three-week period at some point prior to 30 June, providing the following conditions are met:

- You have already made a claim under the CJRS for another employee in your organisation for a period of at least three consecutive weeks between 1 March and 30 June 2020.
- The employee you want to furlough started maternity, shared parental, adoption, paternity or parental bereavement leave before 10 June 2020 and has returned after that date.
- You have made an RTI PAYE submission on behalf of that employee on or before 19 March 2020.

Q. Is the minimum furlough claim period changing?

Yes. Up until 30 June, employees must have been furloughed for a minimum of three weeks in order to make a claim under the CJRS.

From 1 July 2020, there is no minimum furlough period for flexible furlough arrangements. However, any claim through the CJRS portal must be in respect of a minimum one-week period.

For an employer who was operating a rota scheme of at least three weeks on furlough, three weeks off, that can now be amended to much shorter periods to suit the needs of your business.

Q. What is flexible furlough?

From 1 July, you can bring employees back to work for any amount of time and on any shift pattern whilst still being able to claim the CJRS grant for the hours not worked. You will need to pay for any hours the employee does work.

Q. What can be claimed from the CJRS under the flexible furlough scheme?

The wage caps for furloughed employees are proportional to the hours an employee is furloughed, e.g. if you are furloughed for 50% of your normal working hours in the month, you

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would be eligible to receive 50% of the CJRS grant. The actual calculation is quite complex, so please see the guidance below for more details.

Q. Are the claim periods changing?

Yes. Due to the changes around flexibility and employer contributions, claim periods can no longer straddle different months. The first time you can make a claim for days in July will be 1 July and you cannot claim before this point.

Please also note that the last day that you can submit claims for June is 31 July 2020.

Q. When will the CJRS end?

At the moment, it is due to end on 31 October 2020.

WHO CAN CLAIM?

You can claim for any employees you have furloughed if you have furloughed that employee for at least three consecutive weeks between 1 March and 30 June 2020 AND submitted a report under the Real Time Information (RTI) reporting system for that employee on or before 19 March 2020. Exceptions apply to those returning from certain types of statutory leave as described above.

For employees that meet the criteria above, the maximum number you can claim for in any single claim period starting from 1 July cannot exceed the maximum number of employees you claimed for under any claim ending by 30 June.

For example, for an employer who has previously submitted three claims between 1 March 2020 and 30 June, in which the total number employees furloughed in each respective claim was 30, 20 and 50 employees, the maximum number of employees they could furlough in any single claim starting on or after 1 July would be 50.

Please note that when calculating the maximum number of employees you can claim for, the number of any employees you are furloughing for the first time due to them returning from parental leave can be added to any previous maximum.

Q. What if you receive public funding?

As with the existing scheme, if you have staff costs that are publicly funded (even if you're not in the public sector), you should use that money to continue paying your staff, and not furlough your staff.

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Organisations can use the scheme if they are not fully funded by public grants and they should contact their sponsor department or respective administration for further guidance.

MINIMUM FURLOUGH PERIODS

Up to 1 July, any employee you place on furlough must be furloughed for a minimum of three consecutive weeks. If they return to work, even for one day, they must then be furloughed again for a minimum of three weeks to be eligible under the CJRS.

From 1 July, agreed flexible furlough arrangements can last any amount of time and you can enter into a flexible agreement with your employees more than once. However, please note that where a previously furloughed employee starts a new furlough period before 1 July, this must be for a minimum of three weeks, even if it ends AFTER 1 July.

The example given in the government guidance is as follows: A previously furloughed employee can start a new furlough period on 22 June, which would have to continue for at least three consecutive weeks, ending on or after 12 July. After this, the employee can then be flexibly furloughed for any period. However, after 1 July, employers cannot make claims that cross calendar months, so the employer will need to make a separate claim for the period up to 30 June.

Even though minimum furlough periods can last any amount of time, the minimum claim period you can apply for under the CJRS is seven calendar days.

LENGTH OF THE CLAIM PERIOD

There is no maximum length for claim periods that end before 30 June. Any claims for periods starting before 1 July must end on or before 30 June, even if the furlough period continues into July. You will need to make separate claims to cover any days in June and any days in July, even if the period of furlough is continuous.

Claims for any period of furlough up to and including 30 June 2020 must be made by 31 July 2020.

Claims starting on or after 1 July must start and end in the same calendar month and must be for at least seven days, unless you are claiming for the first few days or the last few days in the month. If your pay period straddles two months, you can find examples of how to calculate those claims separately here (for June and July) and here (for July and August).

Q. What about claiming for flexibly furloughed employees?

Please note that when claiming for employees who are flexibly furloughed, you should not claim until you are sure of the exact number of hours they will have worked during the claim period. If

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you claim in advance, and your employee works for more hours than you have told HMRC about, then you will have to pay some of the grant back to HMRC. If you make an error in your claim, you can correct it when making your next claim by adjusting it down to account for the overpayment.

AGREEMENT TO FLEXIBLE FURLOUGH --- ACTION POINT

If you flexibly furlough employees, you will need to agree this with the employee (or reach collective agreement with a trade union). Please note that flexible furlough is different to the existing furlough scheme, so you will need a new written agreement that confirms this new furlough arrangement. You will need to:

- Make sure the agreement is consistent with employment, equality and discrimination laws.
- Keep a written record of the agreement for five years. We have produced two flexible furlough agreements (one for employees with fixed hours and one for employees with variable hours) – please see the documents titled ‘Flexible Furlough Letter – Contracted Hours’ and ‘Flexible Furlough Letter – No Contracted Hours’ under the Employment Law section of our Coronavirus Advice Hub.
- Keep records of how many hours your employees work and the number of hours they are furloughed and not working.

It is up to you whether you want to flexibly furlough any of your employees. You can continue to “fully” furlough employees if you wish but note that the previous rules banning those employees from undertaking any work for you during the time they are on furlough will still apply.

FLEXIBLE FURLOUGH CLAIMS PROCESS

Despite the disparate and daunting nature of the GOV.UK guidance, making a claim for an employee who has been flexibly furloughed is not dissimilar from the existing process. However, you are required to do a bit more groundwork first, especially around calculating your employee’s usual working hours. Essentially, the process can be broken down into four steps:

1. Working out the employee’s usual working hours
2. Calculating the number of furloughed and working hours in a pay period
3. Calculating how much you can claim using the online calculator
4. Making your claim via the HMRC portal

Step 1) Work out the employee's usual hours

If the employee is flexibly furloughed, you will need to work out their usual hours and record the actual hours they work as well as their furloughed hours for each claim period.

There are different calculations you can use to work out the employee's usual hours, depending on whether they work fixed or variable hours.

Q. How do I calculate usual hours for someone with fixed hours and pay?

1. Start with the hours your employee was contracted for at the end of the last pay period ending on or before 19 March 2020.
2. Divide by the number of calendar days in the repeating working pattern, including non-working days.
3. Multiply by the number of calendar days in the pay period (or partial pay period) you are claiming for.
4. Round up to the next whole number if the outcome isn't a whole number.

If an employee with fixed hours was on annual leave, off work sick or on family-related statutory leave at any time during the last pay period ending on or before 19 March, the usual hours should be calculated as if the employee had not taken that leave.

There are worked examples of this sort of calculation on the GOV.UK website here.

Q. How do I calculate usual hours for an employee who works variable hours?

If pay varies by the amount of time worked, legislation introduced in April 2019 means that you should have records of the number of hours your employees have worked.

In a similar way to which you are already calculating how much to claim for fully furloughed variable hours employees, "usual hours" for the flexible scheme will be calculated based on the higher of either the average number of hours worked in the 2019/2020 tax year OR the corresponding calendar period in the 2019/20 tax year.

When calculating usual hours, you should include any leave where the employee was paid in full (such as holidays) and any hours worked as overtime if pay for those hours was not discretionary.

Working out usual hours based on average hours in the full 2019/20 tax year

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1. Start with the number of hours worked (including paid leave) in the tax year 2019/20 before the employee was furloughed, or the end of the tax year if earlier.
2. Divide by the number of calendar days the employee was employed by you in the tax year 2019/20, up until the day before they were furloughed, or the end of the tax year if earlier.
3. Multiply by the number of calendar days in the pay period (or partial pay period) you are claiming for.
4. Round up to the next whole number if the outcome isn't a whole number.

There are worked examples of this sort of calculation on the GOV.UK website here.

Working out usual hours based on the corresponding pay period in the 2019/20 tax year

1. Identify the pay periods in the 2019/20 tax year that correspond to at least one calendar day in the pay period (or partial pay period) you are claiming for.
2. If the pay period (or partial pay period) you are claiming for starts and ends on the same calendar days as the identified pay period in the 2019/20 tax year, use the number of hours they worked in that pay period.
3. If the pay period (or partial pay period) you are claiming for does not start and end on the same calendar days as the identified pay periods in the 2019/20 tax year – you will need to add together a proportion of the hours worked in each of the pay periods you've identified.

There are worked examples of this sort of calculation on the GOV.UK website here.

Working out usual hours based on the hours worked in more than one period in the 2019/20 tax year

1. Start with the number of hours worked in the first pay period identified in the tax year 2019/20.
2. Multiply by the number of calendar days in that pay period which correspond to at least one calendar day in the pay period (or partial pay period) you are claiming for.
3. Divide by the total number of calendar days in the pay period in the tax year 2019/20.
4. Repeat steps 1, 2 and 3 for each subsequent identified pay period in the tax year 2019/20.
5. Add them all together.
6. Round up to the next whole number if the outcome is not a whole number. There are worked examples of this sort of calculation on the GOV.UK website here.

Q. How do I work out an employee's usual hours if they are paid for piecework?

If possible, you should calculate their hours in the same way as set out above for those employees with variable hours.

If you do not know what hours the employee worked, you can estimate the hours based on the number of 'pieces' they produced and the average rate of work per hour (which you should already have worked out to comply with National Minimum Wage rules).

Step 2) Calculate the number of furloughed hours for each employee

Once you know what an employee's usual working hours are in a pay period, Step 2 should be relatively simple. You will have already agreed with your employees how many hours they will work under the flexible furlough scheme and will have kept records of the same.

To calculate the number of furloughed hours, start with your employee's usual working hours total and subtract from that the hours they worked in the claim period.

In view of this step, and the fact that you are required to repay any overclaims, HMRC strongly recommends that you should not claim until you have certainty about the number of hours an employee will be furloughed for in any claim period.

Should you need it, an example of this sort of calculation is on the GOV.UK website here.

Step 3) Calculating the amount you can claim

Once you know how many furlough hours you are claiming for in the pay period, you can calculate the value of that claim. The GOV.UK website has an online calculator which can be used to work out flexible furlough claim amounts, provided you calculate the employee's usual hours first. However, please note that the calculator will NOT work if an employee has returned from any statutory leave in the last three months or has transferred in under TUPE.

Don't forget you can only claim for the employee's regular wages. Please see the Job Retention Scheme FAQ document available on our Coronavirus Advice Hub for further details on what can be included.

The online calculator will ask you to identify the number of furlough hours in the period. A furlough day means every calendar day within a period where the employee was either:

- Fully furloughed; or
- Under a flexible furlough agreement with you.

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We would strongly recommend that you use the online tool to calculate your claim amounts given the complexity of this worked example on the GOV.UK website of a flexible furlough calculation.

If you are required to carry out a manual calculation, further guidance on how to do this can be found here. We suggest that you take advice from your accountant, payroll provider or tax adviser regarding the specifics of any calculation.

Step 4) Making your claim

Once you have worked out how much you are claiming for each fully or flexibly furloughed employee, you can make the claim online here. To make a claim, you will need:

- To be registered for PAYE online
- Your UK bank account number and sort code (only provide bank account details where a BACS payment can be accepted)
- The billing address on your bank account (this is the address on your bank statements)
- Your employer PAYE scheme reference number
- The number of employees being furloughed
- Each employee's National Insurance number (you will need to search for their number if you do not have it or contact HMRC if your employee does not have a number)
- Each employee's payroll or employee number (optional)
- The start date and end date of the claim
- The full amounts you are claiming for, including:
 - Employee wages
 - Employer National Insurance contributions (for claims up to 31 July)
 - Employer minimum pension contributions (for claims up to 31 July)
- Your phone number
- Contact name You also need to provide either:
 - Your name (or the employer's name if you are an agent)
 - Your Corporation Tax unique taxpayer reference

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- Your Self Assessment unique taxpayer reference
- Your company registration number If you are claiming for employees who are flexibly furloughed, you will also need:
 - The number of usual hours your employee would work in the claim period
 - The number of hours your employee has or will work in the claim period
- You will also need to keep a record of the number of furloughed hours your employee has been furloughed in the claim period.

Please note that the government and HMRC guidance on the scheme is being updated and expanded on a regular basis. The information in this document is correct at the time of writing (15 June 2020). No doubt further updates will be released in the forthcoming weeks and this document will be updated in line with that. We expect an updated Treasury Direction in due course, which could be problematic as that has statutory force but will be arrived AFTER the guidance has been issued.

Please note that as further detail emerges, some of the advice provided may change in line with further guidance from the government and may vary from the above until this document is also updated. As a result, please ensure that you check the government's website for the latest guidance on the CJRS.