

# PEOPLE: GUIDANCE ON PARTIAL FURLOUGH PUBLISHED (UK)

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Legal Briefings

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On 12 June HMRC published updated guidance to reflect the changes to the Coronavirus Job Retention Scheme to permit flexible furlough from 1 July and require increasing levels of employer contribution from 1 August. These changes were [announced on 29 May](#) and further guidance was promised by 12 June. In fact, many of the amendments to the guidance pages simply add the information already provided in the 29 May [Fact Sheet](#) but there are some further details which we have highlighted below. The legal framework for the revised scheme will require a further Treasury Direction as the current one only applies until 30 June; no date for publication of a revised Direction has been given.

## CHANGES TO THE CJRS

In summary, the changes to the CJRS announced on 29 May 2020 are that:

- Claims for periods after 30 June 2020 will only be possible from employers who have previously used the scheme in respect of employees they have previously furloughed for a 3 week period ending no later than 30 June – the latest an employee could be placed on furlough for the first time is therefore 10 June 2020. Employers will have until 31st July to make any claims in respect of the period to 30 June.
- Partial furlough will be possible from 1 July 2020. From that date, employers will be able to claim in respect of previously furloughed employees either for full furlough, or for partial furlough where employees work part of their normal hours. The employer must pay wages and employer NICs and pension contributions for the hours worked, and can

make claims under the CJRS in respect of the normal hours not being worked. There is no restriction on the working hours or shift pattern but employers must agree the arrangement with their employee and confirm that agreement in writing. The minimum period for a claim will be a week.

- For July, the CJRS grant will continue to cover 80% of wages for unworked hours (subject to the monthly cap of £2,500 or, for partial furlough, a proportionate cap reflecting the hours not worked), plus associated employer NICs and pension contributions.
- For August, employers must pay the employer NICs and pension contributions for the hours not worked; the CJRS grant will continue to cover 80% of wages subject to the cap.
- For September, employers must contribute 10% of the capped wages (plus employer NICs and pension contributions) with the government paying 70% of capped wages for the hours the employee does not work (so the employee continues to receive 80% wages subject to the cap).
- For October, the employer contribution increases to 20% (plus employer NICs and pension contributions) and the government contribution reduces to 60% of capped wages.
- Employers can continue to top up wages to 100% if they wish.
- The scheme will close on 31 October 2020.

These changes are reflected in the updated guidance.

All of the guidance notes have been updated, with the exception of the "[Work out 80% of your employees' wages](#)" page, the text from which has effectively been updated and moved to two new pages entitled "[Steps to take before calculating your claim](#)" and "[Calculate how much you can claim](#)". (The holiday pay section in the Work out 80% page has been moved, substantively unchanged, to the [Check if you can claim](#) page, so that the Work out 80% page is no longer relevant.) There is a helpful page with links to all the current guidance [here](#) and an overview focussing mainly on the changes to employer contribution levels [here](#).

## **ELIGIBILITY CRITERIA AFTER 30 JUNE 2020**

The updated guidance confirms the key eligibility conditions for claiming any type of furlough after 30 June as:

1. the employer must have successfully claimed a CJRS grant for the relevant employees for a consecutive 3 week period of furlough completed within the period 1 March to 30

June. There is an [exemption](#) for those returning from maternity, shared parental, adoption, paternity or parental bereavement leave who were on payroll on or before 19 March and on leave before 10 June (and provided the employer has met the condition for other employees). The employee does not need to actually be on furlough on 30 June, as long as they have already completed a furlough period of 3 consecutive weeks. The employer must claim for furlough periods up to 30 June by 31 July.

2. the number of employees who can be claimed for cannot exceed the maximum number in any one claim made for furlough periods prior to 1 July (save that family leave returners can be added to that cap).

Where a TUPE transfer takes place after 10 June, the transferee would not be able to meet the first condition in relation to transferring employees even if the employees have been furloughed by the transferor. Helpfully, the "[Check which employees you can put on furlough](#)" guidance confirms that an exception is made in these circumstances where the transferor has submitted a claim for 3 weeks' furlough prior to 30 June for the relevant employees. The number of relevant employees is also added to the transferee's cap under (ii) above, enabling the transferee to continue to furlough these individuals without affecting its ability to furlough its existing workforce. Similar provisions apply for changes in ownership under PAYE succession rules, transfers from a liquidator, and consolidations of group company PAYE schemes.

## **FLEXIBLE FURLOUGH AGREEMENTS**

The requirements for agreeing furlough are set out in the [Check if you can claim for your employee's wages](#) guidance. This has been reworded and now notes that agreements to furlough should be consistent with equality and discrimination laws, as well as employment law, and that records of hours worked and furloughed should be kept. The guidance makes clear that flexible furlough will require specific agreement on the new furlough arrangement; there is a reference to a "written agreement" for flexible furlough, whereas full furlough only requires agreement and a written record of the agreement (so that the employee does not have to provide anything in writing). The difference is probably unintended and will hopefully be corrected. (HMRC may also want to correct the statement that when employees are on furlough, "you cannot ask your employer to do any work" ... )

Flexible furlough can involve working for any amount of time and any work pattern; the employer must itself pay for the hours worked and can claim a grant for the furloughed hours (which will be subject to the same conditions as previously, eg not working during those hours). The guidance makes clear that employers can choose to furlough only part of their workforce and can also continue to fully furlough employees after 1 July if required.

An important point to note is that, if furlough periods start before 1 July, the furlough must still last 3 consecutive weeks (even though it will end after 1 July) in order for the wages to be claimed under the CJRS. Only furlough starting on or after 1 July can be for any duration (the restrictions being on the period for which claims are made (see below), rather than the period of furlough itself). However, the employer would need to make claims covering the days in June and the days in July in two separate claims as set out below.

## **MAKING A CLAIM - CHANGES FROM 1 JULY 2020**

The key document for employers making a claim under the CJRS in respect of periods on and after 1 July 2020 is the new [Steps to take before calculating your claim](#) guidance. This confirms that, from 1 July, claims can only cover days within one calendar month, but this does not prevent the furlough itself from overlapping months - there is no need for an employee's furlough to be ended and restarted with each month-end. For some employers claim periods may well differ from pay periods. This will introduce additional complexity.

In particular, the updated guidance provides that:

- Claims for any furlough periods starting before 1 July must end on or before 30 June (and be submitted by 31 July 2020). Separate claims will need to be submitted to cover the days in June and the days in July, even if employees are furloughed continuously.
- Claim periods starting on or after 1 July must start and end within the same calendar month and must last at least 7 days unless claiming for the first few days or the last few days in a month. Employers can only claim for a period of fewer than 7 days if the period they are claiming for includes either the first or last day of the calendar month, and they have already claimed for the period ending immediately before it.
- Employers can only make one claim for any period so must include all furloughed or flexibly furloughed employees in one claim, even if they are paid at different times. Where employees have been furloughed or flexibly furloughed continuously (or both), the claim periods must follow on from each other with no gaps in between the dates. Employers using flexible furlough should ideally claim only once they are sure of the exact number of hours being worked during the claim period. If claims are made in advance and turn out to be too high, the overclaim must be paid back.
- Where an employee is flexibly furloughed, the employer will need to calculate "usual hours". This is because the 80% grant available and the monthly cap are reduced to reflect the proportion of "usual hours" that will be furloughed (so if the employee is to work 50% of usual hours, the grant will be half of 80% of usual wages subject to a monthly cap of £1,250). An employee's "usual hours" will need to be determined as follows:

- For those who are contracted to work a fixed number of hours and whose pay does not vary according to hours worked, the “usual hours” are the contractual hours as at the end of the last pay period ending on or before 19 March 2020.
- For those on variable hours and pay, the “usual hours” are the higher of either the average number of hours worked in the tax year 2019 to 2020, or the corresponding calendar period in the tax year 2019 to 2020, including any hours of leave for which the employee was paid their full contracted rate (such as annual leave) and any hours worked as ‘overtime’ where pay for those hours was not discretionary.
- For piece workers, the same applies as for variable hours workers, but if the hours worked are unknown, the hours should be estimated based on the number of ‘pieces’ produced and the average rate of work per hour.

The [Calculate how much you can claim](#) guidance sets out how to do the rather complicated calculations required, including for flexible furlough and once the employer contributions increase in stages from August to October. A new [example of calculating a claim for a flexibly furloughed employee](#) has been published and the previous [examples of calculations](#) have been updated.

The [Claim for wages](#) guidance notes that the information required for a claim will include the number of “usual hours” the employee would work in the claim period, the number of hours they will or have worked, and the number of furloughed hours in the claim period. Records of this information and also the calculations required to calculate the usual hours should be kept. The guidance also includes some new text explaining how errors made in claiming will be addressed. If a further claim is being made, that will be adjusted to reflect a previous overpayment; a process is being worked on to recover overclaimed amounts if no new claims are planned. If there has been an underclaim, the employer should contact HMRC to amend the claim, as it will need to conduct additional checks.

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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