

# FURLOUGH UNDER THE JOB RETENTION SCHEME (NOVEMBER 2020 ONWARDS)

## Guidance Note as at 24 November 2020

This guidance note deals with the mechanics of furloughing workers under the Job Retention Scheme (JRS) in place from November 2020. The JRS was first put in place to provide employers, whose operations had been affected by Coronavirus, with wage assistance from 1 March 2020. It was originally intended to close on 31 October 2020, however, was extended as a result of the Government's decision to place England into more severe lockdown measures at the start of November 2020. It was confirmed on 5 November that the extended JRS will run until the end of March 2021.

A Treasury Direction covering the rules of the extended JRS until 31 January 2021 was published on 13 November 2020. A further Direction will be created to cover the remainder of the JRS ending on 31 March 2021 which indicates that there will changes to the rules from February 2021.

The Job Support Scheme, which was intended to replace the JRS from 1 November 2020, has been postponed indefinitely.

The Government has confirmed that there will be no gap in eligibility for support between the previously announced end date of JRS and this extension.

The extended JRS operates in a similar way to how it operated from March 2020 to October 2020, but with some key differences. The deadline to make a claim relating to periods ending on or before 31 October 2020 is 30 November 2020.

### WHAT IS FURLOUGH?

The JRS involves designating some or all of your employees as 'furloughed workers'. This means temporarily changing the status of employees so

that they do no work, or work for fewer hours than normal, but are retained on your books. It is an alternative to making employees redundant which may otherwise be required due to having no, or little, work to offer your current workforce.

The JRS permits both full and flexible furlough. Full furlough is a period during which employers can provide no working hours to an employee; employers who are under instruction from one of the four UK Governments to temporarily close as a direct result of coronavirus restrictions are likely to need to put employees on full furlough.

Flexible furlough involves a combination of both work and furlough. Employers are likely to use this option when they are not under instruction from the Government to close but are experiencing a reduction in demand and are therefore unable to continue to provide normal working hours to employees. Employers will have flexibility to use the scheme for employees for any amount of time or shift pattern and will be able to vary the hours worked in agreement with the employee.

Employers are able to claim a grant from the JRS to cover a portion of wage costs for hours not worked.

### WHICH EMPLOYERS CAN USE THE EXTENDED JRS?

All employers with a UK bank account and UK PAYE schemes can claim the grant, whether their business is open or closed.

The Government expects that employers with publicly funded staff costs (even if they are not in the public sector) will not use the JRS. Organisations can use the JRS if they are not fully funded by public grants and they should contact



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their sponsor department or respective administration for further guidance.

It does not appear that employees need to be facing redundancy in order for an employer to use the JRS. Guidance says “If you cannot maintain your workforce because your operations have been affected by coronavirus (COVID-19), you can furlough employees and apply for a grant...”

The Treasury Direction states, on this topic, “The purpose of JRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of employees who are within the scope of JRS arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus...” and in relation to employees “whose employment activities have been adversely affected by the coronavirus and coronavirus disease or the measures taken to prevent or limit its further transmission.”

Importantly, employers do not need to have used furlough before in order to use the extended scheme. However, all employers will need to meet the eligibility requirements.

## WHICH EMPLOYEES CAN BE FURLOUGHED UNDER THE EXTENDED JRS?

From 1 November 2020, there is no maximum number of employees who can be furloughed.

### On the payroll

To be eligible to be claimed for under this extension, employees must be on an employer's PAYE payroll by 23:59 30 October 2020. This means a Real Time Information (RTI) submission notifying payment for that employee to HMRC must have been made between 20 March 2020 and 30 October 2020.

### No previous furlough needed

Employees do not need to have been furloughed before in order to be placed into the JRS during the extension. However, all employees will need to meet the eligibility requirements.

### Employees made redundant

If employees were employed by you on 23 September 2020 and you made a PAYE RTI submission to HMRC between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee) and were made redundant or stopped working for you on or after 23 September 2020, they can also qualify for the scheme if you re-employ them.

### Fixed term contracts

If the employee's fixed term contract has not already expired, it can be extended or renewed. You can put the employee on furlough as long as they were employed by you on or before 30 October 2020. You must have made a PAYE Real Time Information (RTI) submission to HMRC between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee.

An employee who was on a fixed term contract can be re-employed and claimed for if:

- they were employed by you on 23 September 2020
- their contract expired on or after 23 September 2020
- you made a PAYE RTI submission to HMRC between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee.

All other eligibility criteria must be met.

### Shielding/carers/sickness

Employees can be furloughed where they are unable to work because they:

- are shielding in line with public health guidance (or need to stay at home with someone who is shielding)
- have caring responsibilities resulting from coronavirus, including employees that need to look after children.

The JRS is not intended for short-term sick absences. If, however, employers want to furlough employees for business reasons and they are currently off sick, they are eligible to do so, as with other employees.



Furloughed employees who become ill, due to coronavirus or any other cause, must be paid at least SSP. As under the JRS previously, it is up to employers to decide whether to move these employees onto SSP or to keep them on furlough, at their furloughed rate.

### Types of contract

Employees can be on any type of contract. You can claim for office holders (including company directors); salaried member of Limited Liability Partnerships (LLPs); agency workers (including those employed by umbrella companies); limb (b) workers; contingent workers in the public sector contractors with public sector engagements in scope of IR35 off-payroll working rules.

### Foreign nationals

Foreign nationals are eligible to be furloughed. Grants under the JRS are not counted as ‘access to public funds’, and you can furlough employees on all categories of visa.

### Where a transfer has taken place

A new employer is eligible to claim in respect of employees transferred if the TUPE or PAYE business succession rules apply to the change in ownership. The employees being claimed for should have been:

- transferred from their old employer to their new employer on or after 1 September 2020
- employed by either their old employer or new employer on 30 October 2020
- on a PAYE Real Time Information (RTI) submission to HMRC, by their old or new employer between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee.

### Returning from family leave

If your employee returns from maternity, shared parental, adoption, paternity or parental bereavement leave and you are claiming in respect of a period that starts on or after 1 November, the normal scheme rules apply.

If your employee decides to end their maternity leave early to enable them to be furloughed (with your agreement), they will need to give you at

least 8 weeks’ notice of their return to work and you will not be able to furlough them until the end of the 8 weeks. In certain circumstances, you can agree to shorter notice.

### Sabbatical/unpaid leave

Employees on unpaid sabbatical or unpaid leave cannot be claimed for.

## HOW MUCH IS THE GRANT?

Eligible employers who furlough eligible employees will be able to obtain a grant from the JRS to cover 80% of furloughed employees’ wage costs for unworked hours, to a maximum of £2,500 per employee per month. This level of grant will apply until the end of January 2021 at which point the scheme will be reviewed and grant levels may change. Businesses will be paid upfront to cover wages costs.

When an employee is on full furlough, no wage contribution is needed from the employer.

Previous flexible furlough rules mean that the employer pays the employee for the hours worked and can claim 80% of wage costs for unworked hours to a maximum which is proportionately reduced in accordance with the number of unworked hours.

In both cases, employers can choose to top up pay to the amount the employee would normally receive.

Employers must deduct and pay to HMRC Income Tax and employee National Insurance contributions on the full amount that they pay the employee, including any scheme grant. The JRS grant does not cover employers’ National Insurance contributions or pension contributions.

Employers must also pay to HMRC the employer National Insurance contributions on the full amount that they pay the employee, including any scheme grant.

Claims cannot be made for statutory payments, such as statutory maternity pay, and the gross

amount of earnings falling for reimbursement must be correspondingly reduced.

## **WILL I NEED TO OBTAIN AGREEMENT FROM EMPLOYEES TO BE FURLOUGHED UNDER THE EXTENDED JRS?**

In all cases, you should discuss the situation with employees and agree with them that you are designating them as a furloughed worker, either under full furlough or flexible furlough.

To be eligible for the grant, employers must have confirmed to their employee (or reached collective agreement with a trade union) in writing that they have been furloughed.

If an employee was on furlough in the period running to the end of October 2020, it is recommended to enter into a new agreement to cover the period from 1 November 2020 rather than relying on an original agreement which could have been in place for months. This is because it could be said that a furlough agreement entered into in April, for example, was foreseen to apply only until the end of the Scheme which was, until the very last minute, set for 31 October 2020. It is recommended that, where furlough is continuing uninterrupted from October into November, that the agreement is refreshed to specifically cover the period from 1 November 2020.

Any flexible furlough or furlough agreement made retrospectively that has effect from 1 November 2020 will be valid for the purposes of a JRS claim. Only retrospective agreements put in place up to and including 13 November 2020 may be relied on for the purposes of a JRS claim. Employers looking to refresh pre-November furlough agreements could use this retrospective approach to confirm the validity of the agreement.

If you had already agreed with employees to be placed into the now postponed Job Support Scheme (Open) or Job Support Scheme (Closed), you will need to revisit the agreement and ensure

they agree to be furloughed under the JRS during its extension.

The agreement should cover both changes to working hours and a reduction in pay (if you are not choosing to top up pay to the full amount the employee would normally receive). It should also instruct employees to cease to do all work during the furloughed hours.

There is no minimum furlough period but when claiming the grant for furloughed hours, employers will need to report and claim for a minimum period of 7 consecutive calendar days. Periods of fewer than 7 days can be claimed for if they are what HMRC call an ‘orphan period’, which is a period of no more than 6 consecutive days that:

- begins on the first day of a JRS extension calendar month, or
- ends on the last day of a JRS extension calendar month.

Because claims periods must be wholly within the same month, this provision allows for odd days at the start of the month to be claimed for. An ‘orphan period’ claim can only be made if the employer also makes a claim for that employee for a claim period ending immediately before that orphan period.

## **CAN EMPLOYEES TAKE ANNUAL LEAVE DURING FURLOUGH FROM NOVEMBER?**

Annual leave continues to accrue during furlough. Employees can take annual leave during furlough but employers must top up to full pay. Wage grants can be claimed during annual leave but will still be subject to the maximum grant available i.e. employers must fund the extra themselves. Normal rules on taking annual leave during furlough will apply, meaning that employees can make a request; requests can be turned down by employers (which may be the employer’s approach where topping up furlough pay would be difficult); and employers will be able to require annual leave to be taken.



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Previous rules on annual leave during flexible furlough will continue to apply. This means that annual leave taken during working hours will be treated as unworked hours and therefore count towards hours in respect of which wages can be claimed for.

## CAN EMPLOYEES DO ANY WORK DURING FURLOUGH UNDER THE EXTENDED SCHEME?

Employees cannot do any work for you during their furloughed hours which means any activity that provides services to you or makes money for you or any linked or associated organisation.

Directors on furlough may make a JRS claim, run payroll, and also carry out any statutory duties in relation to filing accounts or providing other information relating to the administration of the company, without it affecting a claim in relation to them.

Employees who are union or non-union representatives may undertake duties and activities for the purpose of individual or collective representation of employees or other workers. Employees who are pension scheme trustees or trustee directors of a corporate trustee may undertake trustee duties in relation to the pension scheme. In both cases, the activities undertaken cannot provide services to you or make money for you or any linked or associated organisation, or for the independent trustee company or any linked organisation in the case of a pension scheme trustee.

Employees can take part in training or volunteer for another employer or organisation. They can find work with another employer when they are on furlough with you provided that their employment contract allows for it.

Training for the purpose of improving an employee's effectiveness in the employer's business, or the performance of the employer's business, is permitted. It cannot provide services to, or generate revenue for, or on behalf of the organisation or a linked or associated organisation. Guidance states that furloughed

employees should be encouraged to undertake training. They will need to be paid the national minimum wage for those hours but this is offset against the wages payable under the grant and in most cases is likely to be covered in its entirety by the grant payment.

Apprentices are permitted to continue with their training whilst on furlough and the same national minimum wage rules apply as above.

## CAN I CLAIM FROM THE EXTENDED SCHEME FOR EMPLOYEES WHO ARE SERVING THEIR NOTICE?

Where you make an assessment that redundancies are needed, normal rules will apply to ensuring fair dismissals. For claim periods relating to November, you can continue to claim for a furloughed employee who is serving a statutory notice period, however grants cannot be used to substitute redundancy payments.

For claim periods starting on or after 1 December 2020, you cannot claim for any days on or after 1 December 2020 during which the furloughed employee was serving a contractual or statutory notice period (this includes people serving notice of retirement or resignation). If an employee subsequently starts a contractual or statutory notice period on a day covered by a previously submitted claim, you will need to make an adjustment.

## WHAT SHOULD I DO IF I HAVE ALREADY AGREED WITH EMPLOYEES THAT THEY WILL BE PLACED INTO THE JOB SUPPORT SCHEME?

Due to the very late confirmation that the JRS was to be extended, some employers may have already taken steps to agree with their employees participation in either the now postponed Job Support Scheme Open or Closed. Such employers should have now re-visited those agreements to confirm to employees that for as long as the extended JRS lasts, or until working conditions change, they will be classed as being on furlough under the JRS, rather than the Job



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Support Scheme, and the payment arrangements of the extended JRS will apply. The overall result of this is that employees will receive a higher rate of pay under the JRS.

## HOW DO I PREPARE TO MAKE A CLAIM?

### Decide the length of your claim period

Your claim period is made up of the days you are claiming a grant for. The start date of your first claim period is the date your first employee was furloughed. Claim periods must start and end within the same calendar month. All claim periods must last at least seven days.

You should match your claim period to the dates you process your payroll, if you can. You can only make one claim for any period so you must include all your furloughed or flexibly furloughed employees in one claim even if you pay them at different times.

You can claim before, during or after you process your payroll.

### Calculate usual pay and hours

You will need to calculate an employee's reference salary in order to determine what 80% of it is. When employees are on flexible furlough, it will also be necessary to calculate what their usual hours are so you can record both working and furloughed hours.

The amount you should use when calculating 80% of your employees' wages for hours not worked is made up of the regular payments you are obliged to make, including regular wages you paid to the employee and non-discretionary payments for hours worked, including overtime. You must disregard certain payments including payments made at your discretion where you were under no contractual obligation to pay, including discretionary bonuses or discretionary commission payments.

For employees that meet the eligibility criteria, and were previously furloughed, you must use the same calculations for calculating reference pay and usual hours as the original JRS.

For an employee who meets the criteria of the extended scheme but was not previously eligible for JRS, alternative calculations of reference pay and usual hours must be used. Here, 80% of wages (subject to the applicable cap) must be calculated for employees:

- on a fixed salary - 80% of the wages payable in the last pay period ending on or before 30 October 2020
- whose pay varies - 80% of the average payable between the start date of their employment or 6 April 2020 (whichever is later) and the day before their JRS extension furlough periods begins.

These dates are inclusive.

If an employee was not previously eligible for JRS and works fixed hours or their pay does not vary according to the number of hours they work, their usual hours will be the contracted hours worked in the last pay period ending on or before 30 October 2020.

If an employee was not previously eligible for JRS and works variable hours, their usual hours will be the average hours worked between:

- the start date of the 2020 to 2021 tax year, (for example, 6 April 2020)
- the day before their JRS extension furlough periods begins

Again, these dates are inclusive.

You'll then need to work out 80% of your employee's usual wage.

### Ensure you have all you need

To make a claim, you'll need:

- to be registered for PAYE online
- your UK, Channel Island or Isle of Man 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
- your employer PAYE scheme reference number

- a contact name
- your telephone number
- the number of employees being furloughed
- each employee's National Insurance number
- each employee's payroll or employee number (optional)
- the start date and end date of the claim
- the full amounts that you're claiming for including employee wages.

You also need to provide either:

- your name (or the employer's name if you're an agent)
- your Corporation Tax unique taxpayer reference
- your Self Assessment unique taxpayer reference
- your company registration number.

If you're claiming for employees that are flexibly furloughed, you'll also need:

- the number of usual hours your employee would usually work in the claim period
- the number of hours your employee has or will work in the claim period.

## **WHEN CAN I MAKE A CLAIM?**

Claims can be made from 8am on Wednesday 11 November 2020.

Claims can be made:

- in respect of an employee for a minimum 7 day claim window
- in advance
- in arrears for the period from 1 November 2020 to 11 November 2020, from the week commencing 9 November 2020.

The claim period must start and end within the same calendar month. If the pay period includes days in more than one month, each of those claims will need to be calculated separately. Claim periods cannot overlap, and employees claimed

for will need to be included in each separate claim made.

An employer can make a claim in anticipation of an imminent payroll run, at the point they run their payroll or after they have run their payroll.

Claims from 1 November 2020 must be submitted by 11.59pm 14 calendar days after the month you're claiming for i.e. the 14<sup>th</sup> of each month except for claims made for January which are required by 15 February 2021. If this time falls on the weekend or a Bank Holiday then claims should be submitted on the next working day. The closing date for claims up to and including 31 October 2020 remains 30 November 2020.

HMRC may accept a claim made after the relevant deadline if you had a reasonable excuse for failing to make a claim in time despite taking reasonable care to do so and you then claimed without delay after the excuse no longer applied. Reasonable excuses may include, for example:

- your partner or another close relative died shortly before the claim deadline
- you had an unexpected stay in hospital that prevented you from dealing with your claim.

Once you've claimed, you'll get a claim reference number. HMRC will then check that your claim is correct and pay the claim amount by BACs into your bank account within six working days.

You must:

- keep a copy of all records for 6 years, including:
  - the amount claimed and claim period for each employee
  - the claim reference number for your records
  - your calculations in case HMRC need more information about your claim
  - for employees you flexibly furloughed, usual hours worked including any calculations that were required

- for employees you flexibly furloughed, actual hours worked
- tell your employees that you have made a claim and that they do not need to take any more action
- pay your employee their wages, if you have not already.

From December 2020, HMRC will publish the names, together with indication of the value of the claim, of employers who have made claims under the JRS for the month of December onwards. Information may be withheld if HMRC are satisfied that publication will expose the employer or its employee, or anyone living with them, to serious risk of violence or intimidation. If you think that a serious risk of violence or intimidation will come from publicising your name, company registration number and amount of claim, you need to tell HMRC and provide them with evidence of why you think this. Further details on how to request that HMRC do not publish your details will be available soon.

The Treasury Direction confirms that payment from the JRS must be returned to HMRC immediately upon the employer becoming unwilling or unable to use the payment for the purpose of JRS. It goes on to say that no JRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purpose of JRS.

## **WHAT RECORDS SHOULD I KEEP?**

You must keep a copy of all records for 6 years, including:

- the amount claimed and claim period for each employee
- the claim reference number for your records
- your calculations in case HMRC need more information about your claim
- usual hours worked, including any calculations that were required, for employees you flexibly furloughed