

Employment – 20:20 vision

Providing clarity and insight on employment law matters

**Furlough scheme – where are we now?
Treasury Direction and latest guidance published**



On 13th November 2020, the latest Treasury Direction on the Coronavirus Job Retention Scheme (“CJRS”) was published along with further updates to the government guidance on the CJRS. The Treasury Direction and government guidance largely confirms what we already knew about the CJRS extension as summarised in our previous alert ([click here](#)), with a few important additions – most notably regarding notice periods. In this alert we pick out some of the most important changes for employers.

1. Notice periods

Under the CJRS it was previously confirmed that an employer was allowed to claim for employees serving contractual or statutory notice.

The most significant point introduced by the latest Treasury Direction and guidance is that employers cannot claim for any days between 1 December 2020 and 31 January 2021 during which the furloughed employee was serving a contractual or statutory notice period for the employer (this includes people serving notice of retirement or resignation).

What does this mean for employers?

This will have an impact for those employers planning redundancies who, in their financial forecasting, had assumed they would be able to claim under the CJRS for notice periods. It may mean we see more employers rushing to give notice to employees as soon as possible in November but obviously employers need to be aware about their duty to carry out a fair redundancy process and, in terms of timing, employers will need to be aware of collective consultation timeframes if applicable.

2. TUPE

For claim periods after 1 November 2020, a new employer is eligible to claim in respect of the employees of a previous business 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.

3. Ending maternity leave early to be furloughed

The new guidance confirms that if an employee decides to end their maternity leave early to enable them to be furloughed (with their employer’s agreement), they will need to give their employer at least 8 weeks’ notice of their return to work and the employer will not be able to furlough them until the end of the 8 weeks. However, the employer can agree to shorter notice than 8 weeks in certain circumstances – but there is not any guidance on what “certain circumstances” means.

4. Publication of CJRS claimant details

Employers should note that under the extended scheme, their names and the amounts claimed under the CJRS will be published and should consider any PR or media attention this may attract.

The Treasury Direction provides that it is now a condition of the CJRS that HMRC must publish information (the “employer information”) about an employer who has received a payment pursuant to a CJRS claim for December 2020 or January 2021. The employer information that must be published is:

- the name of the employer or the qualifying PAYE scheme;
- if the employer has a company reference number, that number; and
- the amount of the CJRS claim made by that employer or a “reasonable indication” of the amount claimed.

An exception may be made for employers who can demonstrate that publication of the employer information would expose themselves, their workforce or other linked to the employer to “serious risk of violence or intimidation”.

5. Deadline for submitting and amending claims

The following deadlines apply to claim submissions and any amendments (subject to HMRC’s discretion to extend the deadline where the employer has reasonable excuse)“:

- claims in respect of November 2020 must be submitted by 14 December 2020 and amended by 29 December 2020;
- claims in respect of December 2020 must be submitted by 14 January 2021 and by 28 January 2021; and
- claims in respect of January 2021 must be submitted by 15 February 2021 and amended by 1 March 2021.

What next?

Employers should consider the impact of the changes on their plans - in particular the notice point and this may affect planned redundancies and financial positions.

The government has said that it will review the scheme at the end of Jan 2021, and we expect a further Treasury Direction in due course to cover February and March 2021.

We have a dedicated Covid-19 team of employment lawyers keeping up to date on the latest developments and who are available to answer any questions you may have. You can find more information [here](#).

If you require further information about anything covered in this alert, please contact Paul Reeves, Leanne Raven, Charlotte Varela or your usual Stephenson Harwood contact.

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