



COVID-19

Coronavirus Job Retention Scheme Update on Flexible Furlough

1st July 2020

From today employers can bring employees back to work who have previously been furloughed, for any amount of time and any shift pattern. They will be able to claim CJRS grant for the normal hours not worked.

Employers can claim the grant for the hours their employees are not working calculated by reference to their usual hours worked in a claim period. Details of how to work out normal hours worked for those employees with [fixed contracted hours](#), as well as those with [variable contracted hours](#) are available from HMRC's website.

The amount you will have to pay your flexibly furloughed workers will be the amount for the hours they have worked, plus:

The lesser of:

- 80% of their usual wages (i.e. in the pay period ending prior to 19th March 2020)
- the maximum wage amount (£2,500)

Multiplied by the employee's furloughed hours and divided by the employee's usual hours.

Employers will be able to make their first claim under the new flexible furlough scheme from 1 July. This will cover the flexible furlough wages calculated above plus the national insurance and pension contributions (capped at 3% of qualifying earnings) also payable on furlough pay.

Future changes to flexible furlough

From 1st August

- Employers will pay employees for the hours they work.
- The government will pay 80% of wages up to a cap of £2,500.
- Employers will need to pay employer NICs and pension contributions due on all pay.

From 1st September

- Employers will pay employees for the hours they work.
- The government will pay 70% of wages up to a cap of £2,187.50 for the hours the employee does not work.
- Employers will need to pay employer NICs and pension contributions, and;
- 10% of wages for the hours not worked, to make up 80% total, up to a cap of £2,500.

From 1st October

- Employers will pay employees for the hours they work.
- The government will pay 60% of wages up to a cap of £1,875 for the hours the employee does not work.
- Employers will need to pay Employer NICs and pension contributions, and;
- 20% of wages for the hours not worked, to make up 80% total, up to a cap of £2,500.

From 1st November

- The CJRS is due to end

While the CJRS is in force the cap on the CJRS grant (£2,500) will be proportional to the hours not worked for those workers who are flexibly furloughed.

How will this impact pension contributions?

The Pensions Regulator (tPR) has published [additional guidance](#) for employers on how flexible furlough will work with pension contributions.

Employer and employee contributions

There's no change to how ordinary pension contributions should be calculated. Furlough pay, plus pay paid for hours worked should be combined, and pension contributions calculated based in the definition of pensionable pay and contributions agreed in pension scheme documentation, the employee's contract of employment, or their flexible furlough agreement.

Calculating a CJRS claim for pension where flexible furlough applies

HMRC has produced [guidance](#) on the calculation of your claim for employer pension contributions if you use flexible furlough in July. There will be no claim due after 31 July as the CJRS will no longer cover pension contributions.

To work out the amount due you must proportion the lower qualifying earnings threshold. The example calculation provided by HMRC is shown below:

- An employee is paid weekly.
- The claim period is 6 July to 12 July 2020, which is also the employee's pay period.
- The employer is claiming £170 towards their employee's wages.
- The employee is furloughed for 10 of their 30 usual hours during the claim period.

To calculate the adjusted Lower Limit for Qualifying Earnings (LLQE) the calculation is:

$$\frac{\text{£120 (LLQE for a week)} \times \text{10 (hours furloughed)}}{30 \text{ (usual hours)}} = \text{£40}$$

Qualifying earnings relating to the furlough grant claimed is:

$$\text{£170} - \text{£40} = \text{£130}$$

Pension contribution due for CJRS is $\text{£130} \times 3\% = \text{£3.90}$

While this represents the contributions that can be claimed from the CJRS, the amount due to be paid to the scheme will be based on the total earnings in the pay period.

For example, if, in addition to the furlough payment the employee received pay for hours worked of £425, the amount payable (assuming minimum automatic enrolment contributions are payable under the scheme) would be:

$$(\text{£425} + \text{£170}) - \text{£120} = \text{£475} \text{ (total qualifying earnings)}$$

$$\times 3\% \text{ employer contribution} = \text{£14.25}$$

$$\times 5\% \text{ employee contribution} = \text{£23.75}$$

Salary sacrifice

The Pensions Regulator has produced [detailed guidance on salary sacrifice](#) with a number of worked examples.

There are a few things worth noting.

1. In September and October you'll be required to pay furlough pay of at least 80% (capped at £2500 per month) but will receive less than this from the CJRS. This statutory top up must be paid to the employee as salary, you cannot reduce this amount to take into account a salary sacrifice arrangement.

This contrasts with a non-statutory top up (e.g. from 80% to 100% of pay) or pay for hours actually worked under flexible furlough, which can be reduced to reflect salary sacrifice arrangements.

2. TPR's calculation of total pensionable pay is the sum of:
 - a. Furlough pay (plus 80% of any salary sacrifice other than for pensions) capped at £2500, and grossed up by the % sacrificed, plus;
 - b. Pay for hours worked, calculated on a pre-sacrifice basis.

e.g. Employee earns £2,000 per month and sacrifices 5% for pension contributions taking their post sacrifice salary down to £1,900.

They agree to work 90 hours per month instead of a normal 158 hours from 1st August 2020

Their furlough pay will be:

$$(\pounds 1900 \times 80\%) \times \frac{90}{158} = \pounds 865.82$$

Their pay for the hours they work will be based on their usual post sacrifice hourly rate of £12.02 per hour so they'll receive a gross pay for hours worked of £1081.80.

To work out their pre-sacrifice pay we need to gross both forms of pay up by the % sacrificed.

Pre sacrifice furlough pay is $\pounds 865.82 / (1 - 0.05) = \pounds 911.39$

Pre sacrifice pay for hours worked is $\pounds 1081.80 / (1 - 0.05) = \pounds 1138.74$

Total pre sacrifice pay is $\pounds 911.39 + \pounds 1138.74 = \pounds 2,050.13$

So, pension contributions due from the employer in respect of the salary sacrifice will be:
 $\pounds 2,050.13 \times 5\% = \pounds 102.51$

Our assumption here is that the employee only sacrifices salary on the hours worked i.e. they are paid at their contractual post sacrifice hourly rate for hours worked.

3. In the example shown in 2 above, the employee has only sacrificed £56.70, i.e. the difference between their pre sacrifice hourly rate (£12.65) and their post sacrifice hourly rate £12.02 x 90 hours. TPR guidance states that it may be possible for the full amount of sacrifice due (£102.51) to be deducted from the pay for hours worked:

“It is important to remember that under the rules of the Coronavirus Job Retention Scheme, pay cannot be reduced below the lower of 80% of their wages or £2,500 a month (or the pro-rated equivalent if your member of staff is working for you part of the time after 1 July 2020).

It may be possible to operate salary sacrifice as normal if the amount of pay above the furlough pay is sufficient. For example, a worker has a salary sacrifice arrangement in place to sacrifice £50 a week to be paid as a pension contribution. Their total pay in a week is £150, made up of £80 for the period they were working whilst on furlough and £70 furlough pay. Their pay cannot be reduced below £70, so depending upon the contractual agreements between the employer and the member of staff during the furlough period the £50 sacrifice may be made.

If the amount of pay above the furlough pay is not sufficient, for example the staff member's total pay in the example above was £100 in the week, then whether or not part of the sacrifice can be made (£30 instead of £50 in this example) will depend on the contractual agreement in place between the employer and their member of staff.

This is a similar situation to the interaction between salary sacrifice and National Minimum Wage (NMW)/National Living Wage (NLW), where a salary sacrifice arrangement cannot reduce pay below the NMW/NLW level”.

We would add word of caution around this guidance as deducting the full sacrifice would only be possible if the remaining salary for hours worked exceeded national living wage (NLW).

In tPR's example the £50 deduction could only be made if the remaining £30, paid for hours worked, exceeded NLW for those hours.

In the second of tPR's examples, where only £30.00 is paid in excess of furlough pay, the whole £30 could not be sacrificed regardless of contractual terms, as this would effectively mean the employee had worked for no pay.

An employer must pay at least national living wage for hours worked.

We would recommend that employers looking to apply the whole sacrifice amount to pay for hours worked seek legal advice to ensure they are able to do this (it would mean paying the employee less than their contractual post sacrifice hourly rate) and ensure that they communicate this to employees, to avoid any misunderstandings over pay due.

Continued easement to consultation requirements

The easement to consultation requirements on a reduction in employer pension contributions, or an increase in employee contributions has been extended to 30th September 2020. This easement only applies to workers who are furloughed (full or flexibly).

If workers are back to work full time and you've previously reduced employer pension contributions you can only continue on the reduced % of you've complied with the standard 60 day consultation requirements.