

The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction

The Treasury, in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020, give the following direction:

1. This direction applies to Her Majesty's Revenue and Customs.
2. This direction modifies the effect of the Coronavirus Job Retention Scheme for which Her Majesty's Revenue and Customs is required to be responsible for the payment and management of amounts payable under the scheme set out in the Schedule to the direction made on 15 April 2020 by the Treasury in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020 ("the CJRS direction").
3. The CJRS direction continues to have effect but is modified so that the scheme to which it relates is that set out in the Schedule to this direction.

Signed by the Chancellor of the Exchequer

A handwritten signature in blue ink, appearing to be 'Rishi S', is written over the printed name of the Chancellor of the Exchequer.

Her Majesty's Treasury

Wednesday 20th May 2020

SCHEDULE

CORONAVIRUS JOB RETENTION SCHEME

Introduction

1. This Schedule sets out a scheme to be known as the Coronavirus Job Retention Scheme (“CJRS”).

Purpose of scheme

- 2.1 The purpose of CJRS 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 furloughed employees arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.
- 2.2 Integral to the purpose of CJRS is that the amounts paid to an employer pursuant to a claim under CJRS are only made by way of reimbursement of the expenditure described in paragraph 8.1 incurred or to be incurred by the employer in respect of the employee to which the claim relates.
- 2.3 The claim must be made in such form and manner and contain such information as HMRC may require at any time (whether before or after payment of the claim) to establish entitlement to payment under CJRS.
- 2.4 Before making payment of a CJRS claim, HMRC must, by publicly available guidance, other publication generally available to the public, or such other means considered appropriate by HMRC, inform a person making a CJRS claim that, by making the claim, the person making the claim accepts that-
 - (a) a payment made pursuant to such claim is made only for the purpose of CJRS (and, in particular, as provided by paragraph 2.2), and
 - (b) the payment must be returned to HMRC immediately upon the person making the CJRS claim becoming unwilling or unable to use the payment for the purpose of CJRS.
- 2.5 No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purpose of CJRS.

Qualifying employers

- 3.1 An employer may make a CJRS claim if the employer has a qualifying PAYE scheme.
- 3.2 An employer has a qualifying PAYE scheme if-
 - (a) at the time of making the CJRS claim, the employer has a PAYE scheme registered on HMRC’s real time information system for PAYE, and
 - (b) that scheme was registered as described in paragraph 3.2(a) on or before 19 March 2020.

Employers with more than one PAYE scheme

4. If an employer has more than one qualifying PAYE scheme-
 - (a) the employer must make a separate claim in relation to each scheme, and
 - (b) the amount of any payment under CJRS will be calculated separately in relation to each scheme.

Qualifying costs

5. The costs of employment in respect of which an employer may make a CJRS claim are costs which-
 - (a) relate to an employee-
 - (i) to whom the employer made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before a day that is a relevant CJRS day,
 - (ii) in relation to whom the employer has not reported a date of cessation of employment on or before that day and
 - (iii) who is a furloughed employee (see paragraph 6.1), and
 - (b) meet the relevant conditions in paragraphs 7.1 to 7.19 in relation to the furloughed employee.

Furloughed employees

- 6.1 An employee is a furloughed employee if-
 - (a) the employee has been instructed by the employer to cease all work in relation to their employment,
 - (b) the period for which the employee has ceased (or will have ceased) all work for the employer is 21 calendar days or more, and
 - (c) the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease.
- 6.2 An employee has not ceased all work for an employer if the employee works for a person connected with the employer (see paragraph 13.4) or otherwise works indirectly for the employer.
- 6.3 Where Statutory Sick Pay is in payment or due to be paid in respect of an employee at the time when the instruction in paragraph 6.1(a) is given, the period described in paragraph 6.1(b) in respect of the employee does not begin until immediately after the end of the period of incapacity for work for which the Statutory Sick Pay is in payment or due to be paid (provided that the time of the end of that period of incapacity for work is determined by an agreement between the employer and employee).

- 6.4 Where, during the period mentioned in paragraph 12, a period of unpaid sabbatical or other period of unpaid leave is enjoyed by an employee (“unpaid leave”)-
- (a) no CJRS claim may be made in respect of the period of unpaid leave,
 - (b) the period described in paragraph 6.1(b) must not begin during the period of unpaid leave.
- 6.5 Where a period of unpaid leave began before the period mentioned in paragraph 12 (“relevant unpaid leave”)-
- (a) the period described in paragraph 6.1(b) must not begin before-
 - (i) the expiry of the period of the relevant unpaid leave agreed or contemplated at the time when it began, or
 - (ii) where the duration of the relevant unpaid leave was uncertain at the time when it began because of its duration being determinable by reference to a particular circumstance, completion of a particular purpose or occurrence of a specified event, the time of the ending of the circumstance, completion of the purpose or occurrence of the event;
 - (b) where a relevant variation has effect in relation to a period of relevant unpaid leave, paragraph 6.5(a) must be construed as if references to the time when the relevant unpaid leave began were references to the time when the relevant variation was made;
 - (c) a relevant variation is an agreement or arrangement (and if more than one, the latest of them) intended to determine the time of the ending of a period of relevant unpaid leave made-
 - (i) after the time when the period of relevant unpaid leave began, and
 - (ii) before 20 March 2020.
- 6.6 Work undertaken by a director of a company must be disregarded for the purposes of paragraphs 6.1 and 6.2 if the work undertaken directly relates to-
- (a) fulfilling a duty or other obligation arising by or under an Act of Parliament relating to the filing of company accounts or provision of other information relating to the administration of the director’s company,
 - (b) making a CJRS claim in respect of an employee of the director’s company, or
 - (c) making a payment of salary or wages of an employee of the director’s company.
- 6.7 An employee has been instructed by the employer to cease all work in relation to their employment only if-
- (a) the employer and employee have agreed that the employee will cease all work in relation to their employment (such agreement may be made by means of a collective agreement between the employer and a trade union),
 - (b) the agreement (including a collective agreement)-

- (i) specifies the main terms and conditions upon which the employee will cease all work in relation to their employment,
 - (ii) is incorporated (expressly or impliedly) in the employee's contract, and
 - (iii) is made in writing or confirmed in writing by the employer (such agreement or confirmation may be in an electronic form such as an email), and
 - (c) the agreement (including a collective agreement) or confirmation is retained by the employer until at least 30 June 2025.
- 6.8 Study or training undertaken must be disregarded for the purposes of paragraphs 6.1 and 6.2 if-
- (a) the purpose of the study or training is to improve-
 - (i) an employee's effectiveness in the employer's business, or
 - (ii) the performance of the employer's business,
 - (b) except as generally improving an employee's effectiveness in, or the performance of, an employer's business, the study or training does not directly-
 - (i) provide a service to the employer or the business activities of the employer, or
 - (ii) contribute to the business activities of the employer or anything generating income or profit for the employer, and
 - (c) the study or training undertaken does not directly contribute to any significant degree-
 - (i) in the production of goods the employer intends to supply to another person as part of the making of a supply of goods or services for a consideration to that person, or
 - (ii) in the making to any person of a supply of services for a consideration by the employer.
- 6.9 References to "employer" in paragraphs 6.8(b) and 6.8(c) include a person connected with the employer.
- 6.10 In this paragraph and paragraphs 6.11 and 6.12-
- (a) references to a scheme are references to anything falling as an occupational pension scheme by virtue of section 1 of the Pensions Schemes Act 1993 or section 1 of the Pensions Schemes (Northern Ireland) Act 1993;
 - (b) an employee is a trustee or manager of a scheme if the employee is a trustee or manager of the scheme determined in accordance with-
 - (i) in relation to England and Wales and Scotland, the Pensions Act 1995 (see, in particular, sections 124 and 176 of that Act), and
 - (ii) in relation to Northern Ireland, the Pensions (Northern Ireland) Order 1995 (see, in particular, articles 2 and 121 of that Order);

- (c) a person who is a director of a company that is a trustee or manager of a scheme (determined in accordance with the legislation mentioned in paragraph 6.10(b)) must be treated as if that person were a trustee or manager of the scheme;
 - (d) a person who is an employee of a company treated as a trustee or manager of a scheme by virtue of paragraph 6.10(c) must be treated as if that person were a trustee or manager of the scheme;
 - (e) whether a person is an independent trustee of a scheme must be determined in accordance with section 23(3) of the Pensions Act 1995.
- 6.11 Work undertaken by an employee for the sole purpose of fulfilling their duties as a trustee or manager of a scheme must be disregarded for the purposes of paragraph 6.1 and 6.2.
- 6.12 Work is not undertaken by an employee for the sole purpose of fulfilling their duties as a trustee or manager of a scheme if-
- (a) the work undertaken by the employee is for the purpose of fulfilling their duties as an independent trustee of the scheme, and
 - (b) the business activities of the employee's employer include-
 - (i) the provision of services as a trustee or manager of the scheme, or
 - (ii) requiring the employee (whether solely or together with other duties or responsibilities) to undertake duties as an independent trustee of the scheme.

Qualifying costs – further conditions

- 7.1 Costs of employment meet the conditions in this paragraph if-
- (a) they relate to the payment of earnings to an employee during a period in which the employee is furloughed, and
 - (b) the employee is being paid-
 - (i) £2500 or more per month (or, if the employee is paid daily or on some other periodic basis, the appropriate pro-rata), or
 - (ii) where the employee is being paid less than the amounts set out in paragraph 7.1(b)(i), the employee is being paid an amount equal to at least 80% of the employee's reference salary.
- 7.2 Except in relation to a fixed rate employee, the reference salary of an employee or a person treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) is the greater of-
- (a) the average monthly (or daily or other appropriate pro-rata) amount paid to the employee for the period comprising the tax year 2019-20 (or, if less, the period of employment) before the period of furlough began, and
 - (b) the actual amount paid to the employee in the corresponding calendar period in the previous year.

- 7.3 The following must not be included in the calculation of an employee's reference salary for the purposes of paragraphs 7.2 and 7.7-
- (a) benefits in kind;
 - (b) anything provided or made available in lieu of a cash payment otherwise payable to the employee (including salary sacrifice schemes);
 - (c) anything which is not regular salary or wages.
- 7.4 In paragraph 7.3(c) "regular" in relation to salary or wages means so much of the amount of the salary or wages as-
- (a) cannot vary according to a relevant matter except where the variation in the amount arises from a non-discretionary payment (see paragraph 7.19), and
 - (b) arises from a legally enforceable agreement, understanding, scheme, transaction or series of transactions.
- 7.5 For the purposes of paragraph 7.4(a), the following are relevant matters-
- (a) the performance of or any part of any business of the employer or any business of a person connected with the employer;
 - (b) the contribution made by the employee to the performance of, or any part of any business;
 - (c) the performance by the employee of any duties of the employment;
 - (d) any similar considerations or otherwise payable at the discretion of the employer or any other person (such as a gratuity).
- 7.6 A person is a fixed rate employee if-
- (a) the person is an employee or treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership),
 - (b) the person is entitled under their contract to be paid an annual salary,
 - (c) the person is entitled under their contract to be paid that salary in respect of a number of hours in a year whether those hours are specified in or ascertained in accordance with their contract ("the basic hours"),
 - (d) the person is not entitled under their contract to a payment in respect of the basic hours other than an annual salary,
 - (e) the person is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month in equal weekly, multiple of weeks or monthly instalments ("the salary period"), and
 - (f) the basic hours worked in a salary period do not normally vary according to business, economic or agricultural seasonal considerations.
- 7.7 The reference salary of a fixed rate employee is the amount payable to the employee in the latest salary period ending on or before 19 March 2020 (but disregarding anything which is not regular salary or wages as described in paragraph 7.3).

- 7.8 In paragraph 7.6 “contract” means a legally enforceable agreement as described in paragraph 7.4(b).
- 7.9 In calculating an employee’s reference salary in accordance with paragraphs 7.2 or 7.7 in the case of a person (“P”) treated as an employee for the purposes of CJRS by virtue of paragraph 13.3(a) (member of a limited liability partnership) then, in addition to the matters described in paragraphs 7.3 to 7.5, no account is to be taken of an amount payable to P unless, by virtue of arrangements described in section 863B(5) of the Income Tax (Trading and Other Income) Act 2005, that amount-
- (a) is fixed,
 - (b) is variable, but is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or
 - (c) is not, in practice, affected by the overall amount of those profits or losses.
- 7.10 In respect of a fixed rate employee, where a period by reference to which the reference salary is determinable (“reference salary period”) includes a period of unpaid sabbatical or unpaid leave (“unpaid period”), the reference salary must be determined on the basis of what would have been paid to the employee during the unpaid period if the sabbatical or leave had been granted on the same terms as the employee’s paid leave during the reference salary period taking account of the matters described in paragraphs 7.13 to 7.16 as are appropriate.
- 7.11 Where paragraph 7.12 applies, the sum of the original payment described in paragraph 7.12(a) and the further amount described in paragraph 7.12(c) must be treated as having been paid at the time of the payment of the original payment for the purposes of paragraph 7.1(b)(ii).
- 7.12 This paragraph applies where-
- (a) an amount by way of wages or salary is paid in respect of a period of employment (“the original payment”) to an employee,
 - (b) the original payment is less than the amount required by paragraph 7.1(b)(ii) for the purpose of claiming CJRS,
 - (c) the employer has paid (or intends to pay within a reasonable period after receiving the payment claimed under CJRS) the employee a further amount (“the further amount”) in respect of the period of employment to which the original payment relates, and
 - (d) the sum of the original payment and the further amount meets the requirements of paragraph 7.1(b)(ii).
- 7.13 In paragraph 7.10-
- (a) the reference to the terms of an employee’s paid leave during a reference salary period is a reference to the terms applying in respect of the annual leave to which the employee would have been entitled to be paid pursuant to regulation 16 of the Working Time Regulations 1998 or regulation 20 of the Working Time (Northern Ireland) Regulations 2016 (“paid annual leave”) if the period of unpaid leave had been a period of paid annual leave;

- (b) the references to unpaid sabbatical and unpaid leave also include references to-
 - (i) statutory payment leave, and
 - (ii) reduced rate paid leave.
- 7.14 In paragraph 7.13(b)(i), “statutory payment leave” means a period of leave-
 - (a) in respect of which statutory sick pay or any of the statutory payments specified in paragraph 8.7 is in payment or due to be paid, or
 - (b) which is a period of shared parental leave as provided for by regulations made pursuant to sections 75E and 75G of the Employment Rights Act 1996 or articles 107E and 107G of the Employment Rights (Northern Ireland) Order 1996 (whether or not statutory shared parental pay described in paragraph 8.7(d) is in payment or due to be paid in respect of that period).
- 7.15 In paragraph 7.13(b)(ii), “reduced rate paid leave” means a period of leave granted immediately following the ending of a period of statutory payment leave on terms that are not the terms which would have applied to that period of leave if the leave had been granted on the same terms that would have applied if the leave had been a part of the employee’s statutory leave entitlement.
- 7.16 For the purposes of paragraph 7.14(a), it does not matter if, by virtue of a legally enforceable agreement, understanding, scheme, transaction or series of transactions, the person described in that paragraph has been paid an amount in excess of the amount otherwise payable by way of statutory sick pay or the statutory payments specified in paragraph 8.7 to which the statutory payment leave relates.
- 7.17 Where paragraph 7.18 applies, a person making their first CJRS claim in respect of a fixed rate employee may make that claim as if paragraph 7.7 referred to 28 February 2020 in place of 19 March 2020.
- 7.18 This paragraph applies where, in anticipation of making the first CJRS claim in respect of the employee mentioned in paragraph 7.17 and before the publication of this direction, the person determined the employee’s reference salary as if paragraph 7.7 referred to 28 February 2020.
- 7.19 A variation in an amount of wages or salary arises from a non-discretionary payment only if-
 - (a) the payment-
 - (i) is in respect of overtime, fees, commissions or a piece rate,
 - (ii) is made in recognition of the employee undertaking additional or exceptional responsibilities,
 - (iii) is made in recognition of the circumstances in which the employee undertakes the employee’s duties or time when they are undertaken, or
 - (iv) is made in recognition of other matters similar to those described in paragraph 7.19(a)(i) to (iii), and
 - (b) a legally enforceable agreement, understanding, scheme, transaction or series of transactions prescribe the method of calculating the amount of wages or salary

payable in respect of the payment (whether or not that method involves the exercise of discretion by the employer or a person connected with the employer).

Expenditure to be reimbursed

- 8.1 Subject as follows, on a claim by an employer for a payment under CJRS, the payment may reimburse-
- (a) the gross amount of earnings paid or reasonably expected to be paid by the employer to an employee;
 - (b) any employer national insurance contributions liable to be paid by the employer arising from the payment of the gross amount;
 - (c) the amount allowable as a CJRS claimable pension contribution.
- 8.2 The amount to be paid to reimburse the gross amount of earnings must (subject to paragraph 8.6) not exceed the lower of-
- (a) £2,500 per month, and
 - (b) the amount equal to 80% of the employee's reference salary (see paragraphs 7.1 to 7.19).
- 8.3 The amount to be paid to reimburse any employer national insurance contributions must not exceed the amount of employer's contributions that would have been payable on the amount of gross earnings being reimbursed under CJRS.
- 8.4 The total amount to be paid to reimburse any employer national insurance contributions must not exceed the total amount of employer's contributions actually paid by the employer for the period of the claim.
- 8.5 For the purposes of CJRS, "employer national insurance contributions" are the secondary Class 1 contributions an employer is liable to pay as a secondary contributor in respect of an employee by virtue of sections 6 and 7 of the SSCBA or sections 6 and 7 of the SSCB(NI)A.
- 8.6 No CJRS claim may include amounts of specified statutory payments in respect of an employee during the employee's period of furlough and the gross amount of earnings falling for reimbursement as described in paragraph 8.2 must be correspondingly reduced.
- 8.7 The specified statutory payments for the purposes of paragraph 8.6 are-
- (a) Statutory Maternity Pay pursuant to section 164 of SSCBA or section 160 of SSCB(NI)A;
 - (b) Statutory Adoption Pay pursuant to section 171ZL of SSCBA or section 167ZL of SSCB(NI)A;
 - (c) Statutory Paternity Pay pursuant to sections 171ZA and 171ZB of SSCBA or sections 167ZA and 167ZB of SSCB(NI)A;
 - (d) Statutory Shared Parental Pay pursuant to sections 171ZU and 171ZV of SSCBA or sections 167ZU and 167ZW of SSCB(NI)A;

- (e) Statutory Parental Bereavement Pay pursuant to section 171ZZ6 of SSCBA or any provision made for Northern Ireland which corresponds to that section.
- 8.8 A payment by an employer of a pension contribution in respect of an employee to a registered pension scheme is a CJRS claimable pension contribution if it is paid in respect of an amount of gross earnings as described in paragraph 8.1(a).
- 8.9 The amount allowable as a CJRS claimable pension contribution under paragraph 8.1(c) is the lower of-
 - (a) the contribution payable by the employer in respect of the employee to the registered pension scheme for the relevant CJRS period, and
 - (b) 3% of the part of the gross earnings paid to an employee in a pay reference period as applicable to the employee of 12 months that are-
 - (i) more than the lower limit for qualifying earnings in that pay reference period (as set out in section 13(1)(a) of the Pensions Act 2008), and
 - (ii) not more than the amount claimable by the employer under CJRS in respect of an amount of gross earnings as described in paragraph 8.1(a) in the same pay reference period.
- 8.10 In the case of a pay reference period of less or more than 12 months, paragraph 8.9(b) applies as if the amounts described in that paragraph were proportionately less or more as appropriate.
- 8.11 For the purposes of determining whether sub-paragraph (a) or sub-paragraph (b) is applicable in paragraph 8.9-
 - (a) the same duration of relevant CJRS period and pay reference period shall be used to compare the lower of the amounts under sub-paragraphs 8.9(a) and 8.9(b),
 - (b) whichever sub-paragraph produces the lower of these two amounts shall be the relevant sub-paragraph for the purposes of determining the amount allowable to be paid as a CJRS claimable pension contribution under paragraph 8.1(c), and
 - (c) the duration of the period used to compare sub-paragraphs 8.9(a) and 8.9(b) is not required to be identical to the period for determining the actual amount allowable that is to be paid under paragraph 8.1(c).
- 8.12 For the purposes of paragraphs 8.8 to 8.11-
 - (a) “registered pension scheme” means a pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (b) “pay reference period” has the meaning given in section 15 of the Pensions Act 2008 and regulations made thereunder;
 - (c) “relevant CJRS period” means the period, part-period or periods over which the employer is required or accustomed to pay pension contributions in respect of the employee that fall within the period of the claim for a payment under CJRS.

- 8.13 For the purposes of paragraphs 8.8 to 8.12 in relation to Northern Ireland, references to sections 13(1)(a) and 15 of the Pensions Act 2008 must be construed as references to sections 13(1)(a) and 15 of the Pensions (No. 2) Act (Northern Ireland) 2008 respectively.

Succession to a business – new employer has no qualifying PAYE scheme

- 9.1 A new employer may make a CJRS claim in respect of a relevant transferred employee as if the new employer had-
- (a) a qualifying PAYE scheme, and
 - (b) made a payment of earnings in respect of the relevant transferred employee in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020.
- 9.2 An employer is a new employer for the purposes of CJRS if the employer's PAYE scheme is not a qualifying PAYE scheme solely because the employer's PAYE scheme was registered on HMRC's real time information for PAYE after 19 March 2020.
- 9.3 An employee is a relevant transferred employee if paragraph 9.4 or 9.6 applies in relation to the employee.
- 9.4 This paragraph applies in relation to an employee if-
- (a) on 28 February 2020, the employee was employed by an employer ("former employer") who is not the new employer,
 - (b) after 28 February 2020, there is a change in the employee's employer from the former employer to the new employer while the employee remains in employment in the same business,
 - (c) immediately before the change, the former employer's PAYE scheme having effect in relation to the employee was a qualifying PAYE scheme,
 - (d) any of the circumstances in paragraph 9.5 apply.
- 9.5 The circumstances referred to by paragraph 9.4(d) are-
- (a) regulation 102 of the PAYE Regulations has effect so that the change of employer from the former employer to the new employer is not to be treated as a cessation of employment for the purposes of regulation 36 of those Regulations (cessation of employment: Form P45);
 - (b) the transfer of the business or undertaking (or part thereof) resulting in the change in the employee's employer from the former employer to the new employer does not operate so as to terminate the contract of employment of the employee by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE");
 - (c) the transfer of the trade, business or undertaking resulting in the change in the employee's employer from the former employer to the new employer does not operate so as to break the continuity of the period of employment of the employee by virtue of section 218 of the Employment Rights Act 1996.

- 9.6 This paragraph applies in relation to an employee if-
- (a) on 28 February 2020, the employee was employed by an employer (“former employer”) who is not the new employer,
 - (b) in the period beginning on 1 March 2020 and ending on 30 June 2020, the employee’s employment with the former employer is terminated before the time of the relevant transfer,
 - (c) the sole or principal reason for the termination of the employee’s employment is the relevant transfer,
 - (d) the sole or principal reason for the employee’s employment by the new employer is the relevant transfer,
 - (e) the employee’s employment by the new employer begins on the day when the employee’s employment with the former employer is terminated,
 - (f) immediately before the termination of the employee’s employment, the former employer’s PAYE scheme having effect in relation to the employee was a qualifying PAYE scheme, and
 - (g) paragraph 9.7 applies in relation to the employee’s former employer.
- 9.7 This paragraph applies in relation to an employee’s former employer if-
- (a) regulations 4 and 7 of TUPE do not apply in relation to the relevant transfer only by virtue of regulation 8(7) of TUPE, and
 - (b) at the time of the relevant transfer, a winding-up order has been made in respect of the former employer pursuant to Chapter 6 of Part 4 of the Insolvency Act 1986.
- 9.8 For the purposes of paragraphs 9.6 and 9.7, “relevant transfer” means a transfer of a business or undertaking (or part thereof) resulting in the change in the employee’s employer from the former employer to the new employer that falls as a “relevant transfer” for the purposes of TUPE.
- 9.9 In relation to Northern Ireland-
- (a) the reference in paragraph 9.5(c) to section 218 of the Employment Rights Act 1996 must be construed as a reference to article 14 of the Employment Rights (Northern Ireland) Order 1996, and
 - (b) the reference in paragraph 9.7(b) to Chapter 6 of Part 4 of the Insolvency Act 1986 must be construed as a reference to Chapter 6 of Part 5 of the Insolvency (Northern Ireland) Order 1989.
- 9.10 This paragraph applies where-
- (a) a CJRS claim by a former employer in respect of a relevant transferred employee would not be possible only because the relevant transfer made by the former employer occurs before the expiry of the period required by paragraph 6.1(b), and

- (b) the new employer makes a CJRS claim in respect of the relevant transferred employee mentioned in paragraph 9.10(a) for a period beginning immediately after the relevant transfer mentioned in that paragraph.

9.11 Where paragraph 9.10 applies, the former employer mentioned in paragraph 9.10(a) may make a CJRS claim in respect of the relevant transferred employee as if the relevant transferred employee had ceased all work for the employer for 21 calendar days or more at the time of the relevant transfer for the purposes of paragraph 6.1(b), but this is subject to-

- (a) satisfying all other requirements relating to the making of a CJRS claim, and
- (b) the claim not relating to a time before the employee ceased all work for the former employer.

9.12 In paragraphs 9.10 and 9.11, references to-

- (a) “new employer” include an employer who makes a CJRS claim by virtue of paragraph 10.2;
- (b) “relevant transfer” are references to-
 - (i) an event by which an employee’s employer changes from a former employer to a new employer in respect of an employee who is a relevant transferred employee because paragraph 9.4 applies in relation to the employee;
 - (ii) an event that falls as a relevant transfer described in paragraph 9.8 in respect of an employee who is a relevant transferred employee because paragraph 9.6 applies in relation to the employee.

Succession to a business – new employer already has a qualifying PAYE scheme

10.1 Paragraph 10.2 applies in a case where an employer is unable to make a CJRS claim pursuant to paragraphs 9.1 to 9.9 solely because the employer has a qualifying PAYE scheme.

10.2 Where this paragraph applies, a CJRS claim (subject to fulfilling all other requirements for making a CJRS claim) may be made as if the employer had made a payment of earnings in respect of the relevant transferred employee in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before 19 March 2020.

PAYE scheme reorganisations

11.1 A PAYE scheme registered on HMRC’s real time information system for PAYE after 28 February 2020 (“new scheme”) is a qualifying PAYE scheme if-

- (a) the purpose of the new scheme is to replace at least two (but not necessarily all) of the employer’s qualifying PAYE schemes (“the transferred schemes”) in consequence of a reorganisation of the employer’s business, and

- (b) the new scheme only has effect in relation to employees who are former members of one of the transferred schemes before the new scheme has effect in relation to any other employee.
- 11.2 An employee is a former member of one of the transferred schemes if-
 - (a) the new scheme has effect in relation to the employee, and
 - (b) one of the transferred schemes has effect in relation to the employee immediately before the new scheme has effect in relation to the employee.
- 11.3 Where a new scheme is a qualifying PAYE scheme by virtue of paragraph 11.1, a payment of earnings to a former member of one of the transferred schemes in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020 in respect of one of the transferred schemes must be treated for the purposes of paragraph 5.(a)(i) as if the new scheme had effect in relation to the payment of earnings and had been shown in a return under Schedule A1 to the PAYE Regulations made on or before 19 March 2020 in respect of the new scheme.

Duration of CJRS

- 12. CJRS has effect only in relation to amounts of earnings paid or payable by employers to furloughed employees in respect of the period beginning on 1 March 2020 and ending on 30 June 2020 and employer national insurance contributions and directed pension payments paid or payable in relation to such earnings.

Definitions etc.

- 13.1 For the purposes of CJRS-
 - (a) a day is a relevant CJRS day if that day is-
 - (i) 28 February 2020, or
 - (ii) 19 March 2020;
 - (b) “charity” has the same meaning as it does in section 18 of the Small Charitable Donations Act 2012 (“SCDA”);
 - (c) “collective agreement” has the meanings given by section 178(1) and (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to England and Wales and Scotland and Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992 in relation to Northern Ireland;
 - (d) “company” has the same meaning as it does for the purposes of the Corporation Tax Acts set out in section 1121 of the Corporation Tax Act 2010 (“CTA”);
 - (e) “earnings” has the same meaning as it does in the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) by virtue of section 62 of that Act;

- (f) “employment” and corresponding references to “employed”, “employer” and “employee” have the same meanings as they do in section 4 of ITEPA as extended by-
 - (i) section 5 of that Act,
 - (ii) regulation 10 of the PAYE Regulations (application to agencies and agency workers), and
 - (iii) paragraphs 13.2 and 13.3 of this direction;
 - (g) “HMRC” means Her Majesty’s Revenue and Customs;
 - (h) “PAYE” means pay as you earn;
 - (i) “PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003;
 - (j) “SSCBA” means the Social Security Contributions and Benefits Act 1992;
 - (k) “SSCB(NI)A” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
 - (l) “Statutory Sick Pay” means statutory sick pay payable pursuant to section 151 of the SSCBA or section 147 of the SSCB(NI)A;
 - (m) “trade union” has the meanings given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to England and Wales and Scotland and Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992 in relation to Northern Ireland.
- 13.2 Where, by virtue of section 61R of ITEPA (workers services provided to the public sector through intermediaries), the Income Tax Acts apply as if a worker were employed by an employer, the worker is treated for the purposes of the CJRS as an employee of the person who is the deemed employer in relation to the worker by virtue of that section (and, in particular, amounts treated as earnings are treated as earnings for those purposes).
- 13.3 Where, by virtue of section 863A of the Income Tax (Trading and Other Income) Act 2005 (limited liability partnerships: salaried members), a person (“P”) is treated for the purposes of the Income Tax Acts as being employed by a limited liability partnership (“E”) under a contract of service instead of being a member of the partnership-
- (a) P is treated as an employee for the purposes of CJRS, and
 - (b) E is treated as P’s employer for the purposes of CJRS.
- 13.4 For the purposes of determining whether a person, company or charity is connected with an employer for the purposes of CJRS-
- (a) whether a person is connected with an employer must be determined in accordance with section 993 of the Income Tax Act 2007;
 - (b) without prejudice to paragraphs 13.4(a) and 13.4(c), whether a company is connected with an employer (where the employer is a company) must be determined in accordance with section 1122 of CTA;

- (c) without prejudice to paragraphs 13.4(a) and 13.4(b), whether a charity is connected with an employer (where the employer is a charity) must be determined in accordance with section 5 of SCDA construed as if-
 - (i) references to a tax year in that section were omitted, and
 - (ii) subsection (7) of that section were omitted.

Other directions under section 76 of the Coronavirus Act 2020

- 14.1 HMRC must take account of any amendment made to CJRS by any other direction under section 76 of the Coronavirus Act 2020.
- 14.2 Entitlement to a payment under CJRS is without prejudice to any entitlement to a payment under any similar scheme arising from a direction under section 76 of the Coronavirus Act 2020.

HMRC's accounts

- 15. CJRS payments made by HMRC must be shown in HMRC's consolidated accounts produced for the purposes of section 6(4) of the Government Resources and Accounts Act 2000 and section 2 of the Exchequer and Audit Departments Act 1921 for the year ending on 31 March 2021.

Claims for CJRS made before and after first publication of this direction

- 16.1 A claim for payment under CJRS must be made in accordance with this Schedule if the claim is made after the day on which this direction is first published.
- 16.2 Where paragraph 16.3 applies to a CJRS claim, this Schedule has effect in relation to that claim.
- 16.3 This paragraph applies to a CJRS claim-
 - (a) made on or before the day on which this direction is first published, and
 - (b) which would be in accordance with this Schedule if paragraph 16.1 had required the claim to be made in accordance with this Schedule at the time when the claim was made.