

**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 section 76 of the Coronavirus Act 2020, give the following direction:

1. This direction applies to Her Majesty's Revenue and Customs.
2. This direction extends, and modifies the effect of, the Coronavirus Job Retention Scheme ("CJRS") 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 as modified by the further directions made in exercise of those powers on 20 May 2020, 25 June 2020, 1 October 2020, 12 November 2020 and 25 January 2021 ("the CJRS directions").
3. CJRS is extended by this direction for the period-
  - (a) beginning on 1 May 2021, and
  - (b) ending on 30 September 2021.
4. The Schedule to this direction sets out the scheme applying for the period-
  - (a) beginning on 1 May 2021, and
  - (b) ending on 30 September 2021.
5. The CJRS directions continue to have effect but are modified as set out in the Schedule to this direction.

Signed by Two of the Lords Commissioners of Her Majesty's Treasury

RISHI SUNAK

Her Majesty's Treasury

REBECCA HARRIS

Her Majesty's Treasury

15 April 2021

## **SCHEDULE**

### **CORONAVIRUS JOB RETENTION SCHEME**

#### ***Introduction***

- 1.1 This Schedule sets out modifications to the scheme known as the Coronavirus Job Retention Scheme (“CJRS”) established by the CJRS directions.
- 1.2 In particular-
- (a) part 1 of this schedule makes provision extending CJRS for the period (“the 7th CJRS direction period”)-
    - (i) beginning on 1 May 2021, and
    - (ii) ending on 30 September 2021;
  - (b) part 2 of this schedule makes provision in respect of earlier CJRS directions;
  - (c) part 3 makes general provision in respect of this direction.
- 1.3 The provision made by this Schedule in relation to CJRS is without prejudice to any matter in connection with the provision made by the CJRS directions.

#### ***Purpose of CJRS***

- 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 employees who are within the scope of CJRS arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.
- 2.2 The extension of CJRS by this direction is necessary for the purpose of CJRS described in paragraph 2.1 arising from the emergency resulting from the resurgence of the incidence of coronavirus and coronavirus disease and the measures taken to reduce further transmission, loss of life, demands upon healthcare resources and damage to economic activity in the United Kingdom.
- 2.3 Integral to the purpose of CJRS is that the amounts paid to an employer pursuant to a CJRS claim are only made by way of reimbursement of the expenditure incurred or to be incurred by the employer in respect of the employee to which the claim relates whose employment activities have been adversely affected by the coronavirus and coronavirus disease or the measures taken to prevent or limit its further transmission.
- 2.4 CJRS claims 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.
- 2.5 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 for by paragraph 2.3),
  - (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, and
  - (c) HMRC must publish information about an employer who has received a payment pursuant to a CJRS claim made under this direction in respect of a CJRS claim period occurring during the 7th CJRS direction period.
- 2.6 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.

### ***Part 1***

## ***EXTENSION OF CJRS FOR THE PERIOD BEGINNING ON 1 MAY 2021 AND ENDING ON 30 SEPTEMBER 2021***

### ***Entitlement to make a CJRS claim***

3. A CJRS claim may be made by a qualifying employer in respect of an employee who is a flexibly-furloughed employee in a CJRS claim period.

### ***Qualifying employers***

- 4.1 An employer is a qualifying employer if the employer has a qualifying PAYE scheme.
- 4.2 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 4.2(a) on or before 2 March 2021.

### ***Employers with more than one PAYE scheme***

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

### ***Flexibly-furloughed employees***

- 6.1 An employee is a flexibly-furloughed employee in a CJRS claim period if-

- (a) the employee is a qualifying employee for the purposes of CJRS,
- (b) the employee has been instructed by the employer-
  - (i) to do no work in relation to their employment during the CJRS claim period, or
  - (ii) not to work the full amount of the employee's usual hours in relation to their employment during the CJRS claim period,
- (c) the employee-
  - (i) does no work in relation to their employment during the CJRS claim period, or
  - (ii) does not work the full amount of the employee's usual hours in relation to their employment during the CJRS claim period,
- (d) the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease or measures taken to prevent or limit its further transmission, and
- (e) there is an agreement in accordance with paragraph 7 having effect for the period covered by the CJRS claim period.

6.2 An employee is a qualifying employee for the purposes of CJRS if-

- (a) the employer making the CJRS claim made a payment ("the payment") to the employee,
- (b) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the employer is required to deliver in accordance with regulations 67B or 67D of those Regulations,
- (c) the return mentioned in paragraph 6.2(b) was delivered to HMRC-
  - (i) after 19 March 2020, and
  - (ii) before 3 March 2021, and
- (d) the employer has not reported to HMRC a cessation of the employee's employment after the payment (or the latest of such payments if more than one has been made).

6.3 For the purposes of paragraph 6.2(c), a return is delivered to HMRC on the day that the return is received by HMRC.

***Agreement between employer and employee***

7. An agreement is in accordance with this paragraph if-

- (a) the employer and employee have agreed (such agreement may be made by means of a collective agreement between the employer and a trade union) that-
  - (i) the employee will do no work in relation to their employment, or

- (ii) the employee will not work the full amount of the employee's usual hours in relation to their employment,
- (b) the agreement (including a collective agreement) specifies the main terms and conditions upon which the employee-
  - (i) will do no work in relation to their employment, or
  - (ii) will not work the full amount of the employee's usual hours in relation to their employment,
- (c) the agreement (including a collective agreement)-
  - (i) is made before the beginning of the period to which the CJRS claim relates (but may subsequently be varied to reflect any variation agreed between the employer and employee during the period to which the CJRS claim relates),
  - (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
- (d) the agreement (including a collective agreement) or confirmation is retained by the employer for at least 5 years after it is made (or subsequently varied).

#### ***CJRS claim periods***

- 8.1 A CJRS claim may only be made in respect of a CJRS claim period.
- 8.2 A CJRS claim period is a period that-
  - (a) begins and ends in the same 7th CJRS direction calendar month, and
  - (b) relates to-
    - (i) a period of 7 or more consecutive days, or
    - (ii) an orphan period.
- 8.3 An orphan period is a period of no more than 6 consecutive days that-
  - (a) begins on the first day of a 7th CJRS direction calendar month, or
  - (b) ends on the last day of a 7th CJRS direction calendar month.
- 8.4 A CJRS claim in relation to an employee may only be made in respect of an orphan period if the employer also makes a CJRS claim in respect of that employee for a CJRS claim period ending immediately before that orphan period.
- 8.5 A CJRS claim must not be made if the CJRS claim period would include a day that is not a permitted CJRS day.
- 8.6 A day is a permitted CJRS day if that day-

- (a) falls in a period that is (or will be) covered by a CJRS claim period (“relevant CJRS claim period”), and
- (b) does not fall in a period covered by a CJRS claim period that-
  - (i) begins on a different day to the day on which the relevant CJRS claim period begins, or
  - (ii) ends on a different day to the day on which the relevant CJRS claim period ends.

8.7 The 7th CJRS direction calendar months are-

- (a) May 2021;
- (b) June 2021;
- (c) July 2021;
- (d) August 2021;
- (e) September 2021.

#### ***Qualifying costs***

9.1 The costs of employment in respect of which an employer may make a CJRS claim are costs which-

- (a) relate to an employee who is a flexibly-furloughed employee for the CJRS claim period,
- (b) relate to the payment of earnings to the employee during that period, and
- (c) meet the condition in paragraph 9.2 in relation to the employee’s furloughed hours occurring in the CJRS claim period.

9.2 The condition referred to in paragraph 9.1(c) is that the amount payable to the employee in relation to the employee’s furloughed hours occurring in the CJRS claim period is an amount equal to or more than an amount determined in accordance with-

- (a) the formula set out in paragraph 9.3, or
- (b) if the amount payable to the employee in relation to the employee’s furloughed hours occurring in the CJRS claim period is less than the amount determined in accordance with the formula set out paragraph 9.3, the formula set out in paragraph 9.4.

9.3 The formula referred to in paragraph 9.2(a) is-

$$A \times \frac{F}{U}.$$

9.4 The formula referred to in paragraph 9.2(b) is-

$$B \times \frac{F}{U}.$$

- 9.5 Where paragraph 9.8 applies, the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim may be determined by applying the formulae in paragraphs 9.3 and 9.4 in respect of each salary period falling wholly or partly within the CJRS claim period to which the CJRS claim relates.
- 9.6 Where the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is determined in the manner described in paragraph 9.5, the formulae in paragraphs 9.3 and 9.4 must be applied in accordance with paragraphs 9.9 to 9.19.
- 9.7 Where the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is not determined in the manner described in paragraph 9.5, the formulae in paragraphs 9.3 and 9.4 must be applied in accordance with paragraphs 9.20 to 9.23.
- 9.8 This paragraph applies where-
- (a) the making of a CJRS claim would be facilitated if the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim were determined by applying the formulae in paragraphs 9.3 and 9.4 in respect of each salary period falling wholly or partly within the CJRS claim period to which the CJRS claim relates, and
  - (b) applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 is not abusive or otherwise contrary to the purposes of CJRS.
- 9.9 Where the formulae in paragraphs 9.3 and 9.4 are applied in respect of a salary period as described in paragraph 9.5-
- (a) paragraph 9.11 applies in relation to a salary period that is a relevant 7-day reference salary period,
  - (b) paragraph 9.15 applies in relation to a salary period that is not a relevant 7-day reference salary period, and
  - (c) the sum of the amounts determined in relation to each salary period occurring wholly or partly within the CJRS claim period is to be taken as the amounts determined in accordance with the formulae set out in paragraphs 9.3 and 9.4 for the purposes of paragraph 9.2.
- 9.10 A salary period is a relevant 7-day reference salary period if the salary period is for a period comprising only 7, 14, 21 or 28 consecutive reference salary days.
- 9.11 For the purposes of paragraphs 9.3 and 9.4 in relation to a salary period that is a relevant 7-day reference salary period-
- (a) *A* is the amount determined in accordance with the formula set out in paragraph 9.12;
  - (b) *B* is the amount which is 80% of the employee's reference salary attributable to the relevant 7-day reference salary period;
  - (c) *F* is the number of furloughed hours in the relevant 7-day reference salary period;
  - (d) *U* is the number of usual hours in the relevant 7-day reference salary period.

9.12 The formula referred to in paragraph 9.11(a) is-

$$£576.92 \times \frac{R}{7}.$$

9.13 For the purposes of paragraph 9.12, R is the number of calendar days occurring in the relevant 7-day reference salary period.

9.14 For the purposes of determining the amount *B* in paragraph 9.11(b), the employee's reference salary must be adjusted proportionately to ensure that the reference salary fairly reflects the proportion attributable to the period covered by the relevant 7-day reference salary period.

9.15 For the purposes of paragraphs 9.3 and 9.4 in relation to a salary period that is not a relevant 7-day reference salary period-

- (a) *A* is the amount determined in accordance with the formula set out in paragraph 9.16;
- (b) *B* is the amount which is 80% of the employee's reference salary attributable to the salary period or the part of the salary period comprising days that are reference salary days;
- (c) *F* is the number of furloughed hours attributable to the salary period or the part of the salary period comprising days that are reference salary days;
- (d) *U* is the number of usual hours attributable to the salary period or the part of the salary period comprising days that are reference salary days.

9.16 The formula referred to in paragraph 9.15(a) is-

$$£2,500 \times \frac{D}{PD}.$$

9.17 For the purposes of paragraph 9.16-

- (a) *D* is the number of calendar days in the salary period or the part of the salary period that are reference salary days;
- (b) *PD* is the number of calendar days in the 7th CJRS direction calendar month to which the CJRS claim relates.

9.18 For the purposes of determining the amount *B* in paragraph 9.15(b), the employee's reference salary must be adjusted proportionately to ensure that the reference salary fairly reflects the proportion attributable to the period covered by the salary period or the part of the salary period comprising days that are reference salary days.

9.19 A day is a reference salary day if it occurs in-

- (i) the CJRS claim period of the CJRS claim, and
- (ii) the 7th CJRS direction calendar month to which the CJRS claim relates.

9.20 For the purposes of paragraphs 9.3 and 9.4 where the formulae in paragraphs 9.3 and 9.4 are not applied in respect of each salary period as described in paragraph 9.5 (calculation on a salary period by salary period basis)-

- (a) *A* is-

- (i) £2500 if the CJRS claim period covers the whole of the 7th CJRS direction calendar month to which the CJRS claim relates, or
  - (ii) if the CJRS claim period is for a period that does not cover the whole of the 7th CJRS direction calendar month to which the claim relates, the appropriate pro-rata;
  - (b) *B* is the amount which is 80% of the employee's reference salary attributable to the CJRS claim period of the CJRS claim;
  - (c) *F* is the number of furloughed hours in the CJRS claim period;
  - (d) *U* is the number of usual hours in the CJRS claim period.
- 9.21 Paragraph 9.22 applies where the period of time covered by a CJRS claim period in respect of an employee is not the same as, or comparable to, the period of time covered by the salary period by reference to which the employee's reference salary is determined in accordance with paragraphs 17.2, 18.2, 18.4 or 18.5.
- 9.22 For the purposes of determining the amount *B* in paragraph 9.20(b), the employee's reference salary must be adjusted proportionately to ensure that the reference salary fairly reflects the proportion attributable to the period of time covered by the CJRS claim period.
- 9.23 For the purposes of paragraph 9.22, the period of time covered by a CJRS claim period and the period of time covered by a salary period are comparable if-
- (a) the CJRS claim period is for the whole of a CJRS month, and
  - (b) the period of time covered by the salary period is no less than 28 days and no more than 31 days.
- 9.24 The condition in paragraph 9.2 is not met if the amount payable in respect of the employee is not paid to the employee.

***Simplification of a CJRS claim allowable where an employee does no work in a CJRS claim period***

- 10.1 Paragraph 10.2 applies where-
- (a) an employee does no work in a CJRS claim period, and
  - (b) the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis).
- 10.2 Where this paragraph applies, paragraph 9.2 may be applied as if the condition in that paragraph required-
- (a) the amount payable to the employee in respect of the CJRS claim period to be determined in respect of each salary period or part of a salary period occurring in the CJRS claim period, and
  - (b) that the amount payable in respect of each salary period or part of a salary period occurring in the CJRS claim period is an amount equal to or more than-

- (i) the higher amount determined in accordance with paragraph 10.3, or
  - (ii) the lower amount determined in accordance with paragraph 10.4.
- 10.3 The higher amount in relation to a salary period is the amount determined by applying-
  - (a) the formula in paragraph 9.12 in respect of salary periods that are relevant 7-day reference salary periods, and
  - (b) the formula in paragraph 9.16 in respect of salary periods that are not relevant 7-day reference salary periods.
- 10.4 The lower amount in relation to a salary period is the amount that is 80% of the employee's reference salary attributable to the salary period or the part of the salary period occurring in the CJRS claim period.
- 10.5 Paragraph 10.6 applies where-
  - (a) an employee does no work in a CJRS claim period, and
  - (b) the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is not determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis).
- 10.6 Where this paragraph applies, paragraph 9.2 may be applied as if the condition in that paragraph required the amount payable to the employee in respect of the CJRS claim period to be an amount equal to or more than an amount determined in accordance with-
  - (a) the amount *A* as set out in paragraph 9.20(a), or
  - (b) the amount *B* as set out in paragraph 9.20(b) if the amount payable in respect of the CJRS claim period is less than the amount *A*.
- 10.7 Paragraphs 9.5 to 9.23 apply as appropriate for the purposes of paragraphs 10.1 to 10.6.

***Employee's relevant reference day for determining an employee's reference salary and usual hours***

- 11.1 Paragraphs 11.2 to 11.5 determine an employee's relevant reference day for the purposes of an employee's reference salary and usual hours in respect of a CJRS claim period.
- 11.2 An employee's relevant reference day in respect of a CJRS claim must be determined by reference to circumstances as they stand immediately before the beginning of the CJRS claim period of the claim.
- 11.3 The relevant reference day in relation to an employee who is a Group 1 employee is 19 March 2020.
- 11.4 The relevant reference day in relation to an employee who is a Group 2 employee is 30 October 2020.
- 11.5 The relevant reference day in relation to an employee who is a Group 3 employee is 2 March 2021.

***Employee's relevant reference day – meaning of Group 1 employee***

- 12.1 An employee is a Group 1 employee if a Group 1 payment has been made to the employee by a person who is a relevant employer.
- 12.2 A payment is a Group 1 payment if-
- (a) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the relevant employer is required to deliver in accordance with regulations 67B or 67D of those Regulations, and
  - (b) the return mentioned in paragraph 12.2(a) was delivered to HMRC on or before 19 March 2020, and
  - (c) the payment is not an excluded payment.

***Employee's relevant reference day – meaning of Group 2 employee***

- 13.1 An employee is a Group 2 employee if-
- (a) the employee is not a Group 1 employee, and
  - (b) a Group 2 payment has been made to the employee by a person who is a relevant employer.
- 13.2 A payment is a Group 2 payment if-
- (a) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the relevant employer is required to deliver in accordance with regulations 67B or 67D of those Regulations, and
  - (b) the return mentioned in paragraph 13.2(a) was delivered to HMRC on or before 30 October 2020,
  - (c) the payment is not a Group 1 payment, and
  - (d) the payment is not an excluded payment.

***Employee's relevant reference day – further provision relating to Groups 1 and 2 employees***

- 14.1 Paragraphs 14.2 to 14.10 apply for the purposes of paragraphs 12.1 to 13.2.
- 14.2 A person is a relevant employer if-
- (a) that person is the employer making the CJRS claim in respect of the employee, or
  - (b) paragraph 14.3 applies in relation to that person.
- 14.3 This paragraph applies in relation to a person if-
- (a) that person employed the employee immediately before the employee became employed by the employer making the CJRS claim in respect of the employee,
  - (b) paragraph 14.4 applies in relation to the employee, and

- (c) paragraph 14.5 applies in relation to the employer making the CJRS claim in respect of the employee.
- 14.4 This paragraph applies in relation to an employee if-
- (a) the CJRS claim being made in respect of the employee is pursuant to paragraphs 33.1 to 33.12 (succession to a business – new employer has no qualifying PAYE scheme) or 34.1 to 34.2 (succession to a business – new employer already has a qualifying PAYE scheme) of this direction,
  - (b) a CJRS claim in respect of the employee has been made by the employer making the CJRS claim in respect of the employee by virtue of the employee falling as a relevant employee or relevant transferred employee pursuant to a business transfer provision, or
  - (c) the employee falls within the description of a relevant employee or a relevant transferred employee set out in a business transfer provision even though no CJRS claim has been made in respect of the employee as described in paragraph 14.4(b).
- 14.5 This paragraph applies in relation to the employer making the CJRS claim in respect of an employee if-
- (a) paragraph 14.4 applies in relation to the employee,
  - (b) the employer falls within the description of a new employer in relation to the employee set out in-
    - (i) paragraphs 33.1 to 34.2 of this direction, or
    - (ii) a business transfer provision (whether or not a CJRS claim has been made in respect of the employee), and
  - (c) the person employing the employee immediately before the employee became employed by the employer making the CJRS claim in respect of the employee falls within the description of former employer in relation to the employee set out in a provision mentioned in paragraph 14.5(b) (whether or not a CJRS claim has been made in respect of the employee).
- 14.6 The business transfer provisions are-
- (a) paragraphs 9.1 to 10.2 of the Schedule to the first CJRS direction;
  - (b) paragraph 9.1 to 10.2 of the Schedule to the second CJRS direction;
  - (c) paragraph 37.1 to 38.3 of the Schedule to the third CJRS direction;
  - (d) paragraph 29.1 to 30.2 of the Schedule to the fifth CJRS direction;
  - (e) the provision made by the Schedule to the sixth CJRS direction corresponding to paragraphs 29.1 to 30.2 of the Schedule to the fifth CJRS direction.
- 14.7 A return is delivered to HMRC on the day that the return is received by HMRC (see paragraphs 12.2(b) and 13.2(b)).
- 14.8 A payment is an excluded payment if-

- (a) a relevant employer has reported to HMRC a cessation of the employee's employment with the employer,
- (b) the cessation of the employee's employment occurred after the making of the payment,
- (c) the cessation of the employee's employment occurred-
  - (i) on or before 23 September 2020, or
  - (ii) on or after 1 November 2020, and
- (d) the cessation of the employee's employment does not fall to be disregarded for the purposes of this paragraph by virtue of paragraph 14.9.

14.9 A cessation of an employee's employment must be disregarded for the purposes of paragraph 14.8(d) if-

- (a) the cessation of employment is necessary for a change in the employee's employment from employment by the person in respect of whom paragraph 14.3 applies to employment by the employer making the CJRS claim in respect of the employee,
- (b) notwithstanding the change in the employee's employer, the employee remains in employment in the same business, and
- (c) any of the circumstances in paragraph 14.10 apply.

14.10 The circumstances referred to by paragraph 14.9(c) are-

- (a) regulation 102 of the PAYE Regulations has effect so that the change of the employee's 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 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 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.

***Employee's relevant reference day – meaning of Group 3 employee***

15. An employee is a Group 3 employee if the employee is neither a Group 1 employee nor a Group 2 employee.

***Reference salary***

16. The reference salary of an employee must be determined in accordance with-
- (a) paragraphs 17.1 to 17.8 and 19.1 to 19.7 if the employee is a fixed rate employee, and
  - (b) paragraphs 18.1 and 18.2 and 19.1 to 19.7 if the employee is not a fixed rate employee.

***Reference salary – fixed rate employees***

- 17.1 A person is a fixed rate employee if-
- (a) the person is-
    - (i) an employee, or
    - (ii) treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(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, and
  - (f) the basic hours worked in a salary period do not normally vary according to business, economic or agricultural seasonal considerations.
- 17.2 The reference salary of a fixed rate employee is the amount payable to the employee in the latest salary period ending on or before the employee’s relevant reference day.
- 17.3 In paragraph 17.1, “contract” means a legally enforceable agreement as described in paragraph 19.2(b).
- 17.4 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 17.5 to 17.8 as appropriate.
- 17.5 In paragraph 17.4-
- (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.

17.6 In paragraph 17.5(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 30.2 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 30.2(d) is in payment or due to be paid in respect of that period).

17.7 In paragraph 17.5(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.

17.8 For the purposes of paragraph 17.6(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 30.2 to which the statutory payment leave relates.

#### ***Reference salary – employees other than fixed rate employees***

18.1 The reference salary of an employee (or a person treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(a) (member of a limited liability partnership)) who is not a fixed rate employee must be determined in accordance with-

- (a) paragraph 18.2 in relation to an employee whose relevant reference day is 19 March 2020,
- (b) paragraph 18.4 in relation to an employee whose relevant reference day is 30 October 2020, or
- (c) paragraph 18.5 in relation to an employee whose relevant reference day is 2 March 2021.

18.2 The reference salary of an employee (or a person treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(a) (member of a limited liability partnership)) whose relevant reference day is 19 March 2020 is the greater of-

- (a) the average monthly (or daily or other appropriate pro-rata) amount payable to the employee in the period that-
  - (i) begins on the day that is the relevant first day, and
  - (ii) ends on the day that is the relevant last day, and
- (b) the amount earned by the employee in the corresponding calendar period occurring in 2019.

18.3 For the purposes of paragraph 18.2-

- (a) the relevant first day is the day that is the later of-
  - (i) 6 April 2019, and
  - (ii) the first day when the employee's employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day began;
- (b) the relevant last day is the earlier of-
  - (i) 5 April 2020, and
  - (ii) the day before the first day covered by a CJRS claim made pursuant to the original CJRS directions in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.

18.4 The reference salary of an employee (or a person treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(a) (member of a limited liability partnership)) whose relevant reference day is 30 October 2020 is the average monthly (or daily or other appropriate pro-rata) amount payable to the employee in the period-

- (a) beginning on the later of-
  - (i) 6 April 2020, and
  - (ii) the first day when the employee's employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day began, and
- (b) ending immediately before the earlier of the beginning of-
  - (i) the first period covered by a CJRS claim made pursuant to the fifth CJRS direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day,
  - (ii) the first period covered by a CJRS claim made pursuant to the sixth CJRS direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day, or
  - (iii) the first period covered by a CJRS claim made pursuant to this direction in respect of the employee by a person who is a relevant employer in relation

to the employee for the purpose of determining the employee's relevant reference day.

- 18.5 The reference salary of an employee (or a person treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(a) (member of a limited liability partnership)) whose relevant reference day is 2 March 2021 is the average monthly (or daily or other appropriate pro-rata) amount payable to the employee in the period-
- (a) beginning on the later of-
    - (i) 6 April 2020, and
    - (ii) the first day when the employee's employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day began, and
  - (b) ending immediately before the beginning of the first period covered by a CJRS claim made pursuant to this direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.
- 18.6 For the purposes of paragraphs 18.2(a), 18.4 and 18.5, the calculation of an average monthly (or daily or other appropriate pro-rata) amount payable to an employee in a period must exclude from the calculation-
- (a) a period of time falling as-
    - (i) statutory payment leave described in paragraph 17.6, or
    - (ii) reduced rate paid leave described in paragraph 17.7, and
  - (b) an amount in payment, due to be paid or otherwise payable in respect of a period of time described in paragraph 18.6(a).
- 18.7 Paragraph 18.6 does not apply if the period of time by reference to which the average monthly (or daily or other appropriate pro-rata) amount is determined comprises only a period of time falling as-
- (a) statutory payment leave described in paragraph 17.6, or
  - (b) reduced rate paid leave described in paragraph 17.7.
- 18.8 The period of time by reference to which an employee's reference salary is determined in accordance with paragraph 18.2, 18.4, or 18.5 must be treated as the salary period by reference to which the employee's reference salary is determined for the purposes of paragraphs 9.3 to 9.24.

#### ***Reference salary – general provisions***

- 19.1 The following must not be included in the calculation of an employee's reference salary for the purposes of paragraphs 17.2, 18.2, 18.4 or 18.5-
- (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.
- 19.2 In paragraph 19.1(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 19.4), and
  - (b) arises from a legally enforceable agreement, understanding, scheme, transaction or series of transactions.
- 19.3 For the purposes of paragraph 19.2(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 amounts otherwise payable at the discretion of the employer or any other person (such as a gratuity).
- 19.4 A variation in an amount of wages or salary arises from a non-discretionary payment (see paragraph 19.2(a)) 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 the time when they are undertaken, or
    - (iv) is made in recognition of other matters similar to those described in paragraph 19.4(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).
- 19.5 In calculating an employee’s reference salary in accordance with paragraphs 17.2, 18.2, 18.4 or 18.5 in the case of a person (“P”) treated as an employee for the purposes of CJRS by virtue of paragraph 40.3(a) (member of a limited liability partnership) then, in addition to the matters described in paragraphs 19.1 to 19.3, 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.
- 19.6 Where paragraph 19.7 applies, the sum of the original payment described in paragraph 19.7(a) and the further amount described in paragraph 19.7(c) must be treated as having been paid at the time of the payment of the original payment for the purposes of paragraph 9.2.
- 19.7 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 9.2 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 9.2.

***CJRS claim period – meaning of usual hours***

- 20.1 The usual hours of an employee (whether or not the employee is a fixed rate employee) for a CJRS claim period must be determined-
- (a) on the fixed hours basis if paragraph 20.2 applies in relation to the employee, and
  - (b) on the variable hours basis in any other case.
- 20.2 This paragraph applies in relation to an employee whose contract-
- (a) requires the employee to work a specific number of hours over a period of time prescribed by the contract, and
  - (b) does not require the employee’s pay in respect of the period of time prescribed by the contract to vary according to the number of hours actually worked in that period.
- 20.3 References to an employee’s contract in paragraphs 20.2, 21.4, 21.5, 24.4 and 24.5 are to a legally enforceable agreement as described in paragraph 19.2(b).

***CJRS claim period – usual hours – fixed hours basis***

- 21.1 The formula in paragraph 21.2 applies to determine the usual hours for a CJRS claim period in respect of an employee whose usual hours must be determined on the fixed hours basis.
- 21.2 The formula referred to in paragraph 21.1 is-

$$CP \times \frac{H}{P}$$

- 21.3 For the purposes of paragraph 21.2-
- (a)  $CP$  is the number of calendar days covered by the CJRS claim period;
  - (b)  $H$  is the number of working hours of the relevant repeating shift pattern;
  - (c)  $P$  is the number of calendar days covered by that repeating shift pattern.
- 21.4 A repeating shift pattern is the regular working pattern a contract requires an employee to undertake in a periodic cycle in the course of the employee's employment that specifies-
- (a) the number of hours the employee must work over the course of the cycle before the next cycle begins, and
  - (b) the number of calendar days in the cycle over which the hours must be worked (including days on which the employee is not required to work) before the next cycle begins.
- 21.5 The relevant repeating shift pattern is that having effect in relation to the employee under the terms of a contract having effect at the end of the latest salary period ending on or before the employee's relevant reference day.
- 21.6 In determining the usual hours of an employee in relation to a period of time, an hour that would otherwise be counted as a usual hour determined on the fixed hours basis in respect of an employee must not be excluded from the total number of the employee's usual hours solely because that hour is-
- (a) statutory payment leave as described in paragraph 17.6, or
  - (b) reduced rate paid leave as described in paragraph 17.7.
- 21.7 Paragraph 21.8 applies where the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis).
- 21.8 Where this paragraph applies, the formula in paragraph 21.2 must be applied in respect of each salary period falling wholly or partly within the CJRS claim period ("relevant part CJRS claim period") as if  $CP$  referred to the number of calendar days covered by the salary period (or part thereof) falling within the CJRS claim period.
- 21.9 In respect of a relevant part CJRS claim period-
- (a) paragraph 26.1 applies as if it provided that an amount of time that is less than an hour must be rounded up or down to the nearest whole number, and
  - (b) appropriate and proportionate adjustments must be made in respect of all matters relevant to determining the amount claimable in respect of the CJRS claim period of the CJRS claim so as to ensure the claim is not abusive or otherwise contrary to the purpose of CJRS.

***CJRS claim period – usual hours – variable hours basis***

- 22.1 The usual hours for a CJRS claim period in respect of an employee whose usual hours must be determined on the variable hours basis must be determined in accordance with-
- (a) paragraph 22.2 in relation to an employee whose relevant reference day is 19 March 2020, or
  - (b) paragraph 22.3 in relation to an employee whose relevant reference day is-
    - (i) 30 October 2020, or
    - (ii) 2 March 2021.
- 22.2 The usual hours for a CJRS claim period in respect of an employee whose usual hours must be determined in accordance with this paragraph is the higher of-
- (a) the number of hours determined using the averaging method (see, in particular, paragraphs 24.1 to 24.13), and
  - (b) the number of hours determined using the calendar look-back method (see, in particular, paragraphs 25.1 to 25.12).
- 22.3 The usual hours for a CJRS claim period in respect of an employee whose usual hours must be determined in accordance with this paragraph is the number of hours determined using the averaging method.

***CJRS claim period – usual hours – variable hours basis (relevant output work employee)***

- 23.1 For the purposes of paragraphs 24.4(a), 25.4(a), 25.9(a), an employee is a relevant output work employee if paragraph 23.2 applies in relation to an employee.
- 23.2 This paragraph applies in relation to an employee-
- (a) whose contract provides for the employee to be paid by a measure of output by the worker (including a number of pieces made or processed or a number of tasks performed) which does not fall as time work within regulation 30 of the NMWR 2015, and
  - (b) whose employer does not know how many hours the employee works in any given period of time.

***CJRS claim period – usual hours – variable hours basis (averaging method)***

- 24.1 The formula in paragraph 24.2 applies to determine usual hours using the averaging method.
- 24.2 The formula referred to in paragraph 24.1 is-
- $$CP \times \frac{H}{D}.$$
- 24.3 For the purposes of paragraph 24.2-
- (a) *CP* is the number of calendar days covered by the CJRS claim period;

- (b)  $H$  is the number of relevant worked hours;
- (c)  $D$  is the number of relevant employed days.

24.4 For the purposes of paragraph 24.3(b) an hour is a relevant worked hour if-

- (a) the hour-
  - (i) in respect of a relevant output work employee, is an hour of output work (determined in accordance with Chapter 4 of Part 5 of the NMWR 2015) undertaken by the employee for a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day, or
  - (ii) in any other case, is an hour when the employee undertook paid work as an employee pursuant to a contract between the employee and a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day,
- (b) the hour occurred in the relevant reference period (see paragraph 24.7 ), and
- (c) in relation to an employee whose relevant reference day is 19 March 2020, the hour occurred before the earlier of-
  - (i) 6 April 2020, and
  - (ii) the time when the employee ceased all work in relation to their employment relevant for the making of a CJRS claim by the employer in respect of the employee in accordance with the original CJRS directions.

24.5 For the purposes of paragraph 24.3(c), a day is a relevant employed day if-

- (a) the day is a day on which a contract has effect between the employee and a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day,
- (b) the day occurred in the relevant reference period (see paragraph 24.7),
- (c) in relation to an employee whose relevant reference day is 19 March 2020, the day occurred before the earlier of-
  - (i) 6 April 2020, and
  - (ii) the time when the employee ceased all work in relation to their employment relevant for the making of a CJRS claim by the employer in respect of the employee in accordance with the original CJRS directions,
- (d) the day does not fall in a period of statutory payment leave described in paragraph 17.6, and
- (e) the day does not fall in a period of reduced rate paid leave described in paragraph 17.7.

24.6 For the purposes of paragraphs 24.4(c)(ii) and 24.5(c)(ii)-

- (a) the reference to the time when the employee ceased all work in relation to their employment relevant for the making of a CJRS claim by an employer must be construed as a reference to the first day when the employee ceased all work in relation to their employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day, and
- (b) the reference to the making of a CJRS claim by an employer in respect of the employee in accordance with the original CJRS directions must be construed as a reference to the making of a CJRS claim in respect of the employee in accordance with the original CJRS directions by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.

24.7 The relevant reference period for the purposes of paragraphs 24.4(b) and 24.5(b) is-

- (a) the tax year 2019-20 in relation to an employee whose relevant reference day is 19 March 2020,
- (b) in relation to an employee whose relevant reference day is 30 October 2020, the period in paragraph 24.8, and
- (c) in relation to an employee whose relevant reference day is 2 March 2021, the period in paragraph 24.9.

24.8 The period mentioned in paragraph 24.7(b) is the period-

- (a) beginning on the later of-
  - (i) 6 April 2020, and
  - (ii) the first day when the employee's employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day began, and
- (b) ending immediately before the earlier of the beginning of-
  - (i) the first period covered by a CJRS claim made pursuant to the fifth CJRS direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day,
  - (ii) the first period covered by a CJRS claim made pursuant to the sixth CJRS direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day, or
  - (iii) the first period covered by a CJRS claim made pursuant to this direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.

24.9 The period mentioned in paragraph 24.7(c) is the period-

- (a) beginning on the later of-
    - (i) 6 April 2020, and
    - (ii) the first day when the employee’s employment with a person who is a relevant employer in relation to the employee for the purpose of determining the employee’s relevant reference day began, and
  - (b) ending immediately before the beginning of the first period covered by a CJRS claim made pursuant to this direction in respect of the employee by a person who is a relevant employer in relation to the employee for the purpose of determining the employee’s relevant reference day.
- 24.10 For the purposes of paragraph 24.5(a), it does not matter if the employee undertook no work for the employer on that day.
- 24.11 Paragraph 24.12 applies where the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis).
- 24.12 Where this paragraph applies, the formula in paragraph 24.2 must be applied in respect of each salary period falling wholly or partly within the CJRS claim period (“relevant part CJRS claim period”) as if *CP* referred to the number of calendar days covered by the salary period (or part thereof) falling within the CJRS claim period.
- 24.13 In respect of a relevant part CJRS claim period-
- (a) paragraph 26.1 applies as if it provided that an amount of time that is less than an hour must be rounded up or down to the nearest whole number, and
  - (b) appropriate and proportionate adjustments must be made in respect of all matters relevant to determining the amount claimable in respect of the CJRS claim period of the CJRS claim so as to ensure the claim is not abusive or otherwise contrary to the purpose of CJRS.

***CJRS claim period – usual hours – variable hours basis (calendar look-back method for Group 1 employees)***

- 25.1 Where paragraph 25.3 applies, paragraph 25.4 applies to determine usual hours using the calendar look-back method.
- 25.2 Where paragraph 25.3 does not apply, paragraph 25.5 applies to determine usual hours using the calendar look-back method.
- 25.3 This paragraph applies when the first calendar day of a CJRS claim period and the last calendar day of that period correspond exactly with the first and last calendar days of a salary period in 2019.
- 25.4 Where this paragraph applies, the usual hours are-
- (a) in relation to a relevant output work employee, the number of hours of output work (determined in accordance with Chapter 4 of Part 5 of the NMWR 2015) occurring in

the salary period mentioned in paragraph 25.3 undertaken by the employee for a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day;

- (b) in any other case, the number of hours of relevant worked hours occurring in the salary period mentioned in paragraph 25.3 undertaken by the employee for a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.

25.5 Where this paragraph applies, the usual hours for a CJRS claim period occurring in a 7th CJRS direction calendar month must be determined in accordance with the following steps-

- (a) Step 1: the calendar days occurring in the relevant reference month (see paragraph 25.8) corresponding to the calendar days covered by the CJRS claim period ("the relevant reference month calendar days") must be identified;
- (b) Step 2: the salary periods that include one or more of the relevant reference month calendar days ("the relevant reference month salary periods") must be identified;
- (c) Step 3: the formula in paragraph 25.6 must be applied separately to each of the relevant reference month salary periods identified in step 2 to establish the number of usual hours referable to each of those salary periods;
- (d) Step 4: the usual hours referable to each of the relevant reference month salary periods must be totalled to determine the number of usual hours for the purposes of the CJRS claim.

25.6 The formula referred to in paragraph 25.5(c) is-

$$H \times \frac{CD}{SP}.$$

25.7 For the purposes of paragraph 25.6-

- (a) *H* is the number of relevant worked hours occurring in the relevant reference month salary period (including any relevant worked hours that do not occur in the relevant reference month);
- (b) *CD* is the number of the relevant reference month calendar days occurring in the relevant reference month salary period (including any relevant reference month calendar days that do not occur in the relevant reference month);
- (c) *SP* is the number of days covered by the relevant reference month salary period (including any days that do not occur in the relevant reference month).

25.8 For the purposes of paragraphs 25.5 to 25.7, the relevant reference month in respect of a CJRS claim period occurring in a 7th CJRS direction calendar month is the corresponding calendar month in 2019.

25.9 For the purposes of paragraph 25.7(a) an hour is a relevant worked hour if the hour-

- (a) in relation to a relevant output work employee, is an hour of output work (determined in accordance with Chapter 4 of Part 5 of the NMWR 2015) undertaken

by the employee for a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day, or

- (b) in any other case, is an hour when the employee undertook paid work as an employee pursuant to a contract between the employee and a person who is a relevant employer in relation to the employee for the purpose of determining the employee's relevant reference day.
- 25.10 Paragraph 25.11 applies where the question as to whether the condition in paragraph 9.2 is met in relation to a CJRS claim is determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis).
- 25.11 Where this paragraph applies, paragraph 25.5 must be applied in respect of each salary period falling wholly or partly within the CJRS claim period as if-
- (a) that paragraph made provision for determining the usual hours in respect of a salary period falling wholly or partly within a CJRS claim period,
  - (b) the reference in paragraph 25.5(a) to the calendar days covered by the CJRS claim period were a reference to the calendar days covered by the salary period, and
  - (c) paragraph 25.5(d) made provision for determining the number of usual hours for the number of calendar days covered by the whole or part of the salary period falling within the CJRS claim period.
- 25.12 Where paragraph 25.5 is applied as described in paragraph 25.11-
- (a) paragraph 26.1 applies as if it provided that an amount of time (determined by reference to paragraph 25.5 applied as described in paragraph 25.11) that is less than an hour must be rounded up or down to the nearest whole number, and
  - (b) appropriate and proportionate adjustments must be made in respect of all matters relevant to determining the amount claimable in respect of the CJRS claim period of the CJRS claim so as to ensure the claim is not abusive or otherwise contrary to the purpose of CJRS.

#### ***CJRS claim period – usual hours – general provisions***

- 26.1 If the number of usual hours determined in accordance with the fixed hours basis or the variable hours basis includes an amount of time that is less than an hour, the number of usual hours must be rounded up to the next whole number.
- 26.2 In determining the usual hours of an employee in relation to a period of time, on the fixed hours basis or the variable hours basis, an hour that would otherwise be counted as a usual hour in respect of the employee must not be excluded from the total number of the employee's usual hours solely because that hour is-
- (a) paid annual leave pursuant to regulation 16 of the Working Time Regulations 1998 or regulation 20 of the Working Time (Northern Ireland) Regulations 2016, or

- (b) leave taken on account of time worked pursuant to a flexible work time arrangement.

***CJRS claim period – meaning of furloughed hours***

27. The number of furloughed hours in a CJRS claim period relating to an employee must be determined by subtracting the number of hours the employee works in that period from the employee's usual hours for that period.

***Expenditure to be reimbursed***

28. On a claim by an employer for a payment under CJRS, the payment may reimburse the gross amount of earnings paid or reasonably expected to be paid by the employer to an employee (subject to the maxima determined in accordance with paragraphs 29.1 to 29.4).

***Maximum gross earnings claimable***

- 29.1 The amount to be paid to reimburse the gross amount of earnings must not exceed the lower of-
- (a) the amount determined in accordance with the formula in paragraph 9.3, and
  - (b) the amount determined in accordance with the formula in paragraph 9.4.
- 29.2 The formulae in paragraphs 9.3 and 9.4 must be applied on the same basis for the purposes of paragraph 29.1 as they are for the purposes of the condition in paragraph 9.2, accordingly-
- (a) where the condition in paragraph 9.2 in relation to the CJRS claim is determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis)-
    - (i) paragraphs 9.9 to 9.19 apply for the purposes of paragraph 29.1 subject to the modifications in paragraphs 29.3 and 29.4, and
    - (ii) references in paragraph 29.1 to amounts determined in accordance with the formulae in paragraphs 9.3 and 9.4 are references to the amount determined in accordance with those paragraphs in relation to a salary period or the part of the salary period comprising days that are reference salary days in relation to the CJRS claim; and
  - (b) where the condition in paragraph 9.2 in relation to the CJRS claim is not determined by applying the formulae in paragraphs 9.3 and 9.4 in the manner described in paragraph 9.5 (calculation on a salary period by salary period basis)-
    - (i) paragraphs 9.20 to 9.23 apply for the purposes of paragraph 29.1 subject to the modifications in paragraphs 29.3 and 29.4, and
    - (ii) references in paragraph 29.1 to amounts determined in accordance with the formulae in paragraphs 9.3 and 9.4 are references to the amount

determined in accordance with those paragraphs in relation to the CJRS claim period of the CJRS claim.

29.3 Where the CJRS claim period of a CJRS claim occurs in the 7th CJRS direction calendar month of July 2021, the modifications for the purposes of paragraph 29.1 referred to in paragraphs 29.2(a)(i) and 29.2(b)(i) are that-

(a) paragraph 9.12 must be construed as if the formula set out in that paragraph were-

$$£504.81 \times \frac{R}{7};$$

(b) paragraph 9.16 must be construed as if the formula set out in that paragraph were-

$$£2,187.50 \times \frac{D}{PD};$$

(c) paragraph 9.20(a)(i) must be construed as if the amount specified in that paragraph were £2,187.50 per month;

(d) paragraphs 9.11(b), 9.15(b) and 9.20(b) must be construed as if the percentage specified in those paragraphs were 70%.

29.4 Where the CJRS claim period of a claim occurs in the 7th CJRS direction calendar months of August or September 2021, the modifications for the purposes of paragraph 29.1 referred to in paragraphs 29.2(a)(i) and 29.2(b)(i) are that -

(a) paragraph 9.12 must be construed as if the formula set out in that paragraph were-

$$£432.69 \times \frac{R}{7};$$

(b) paragraph 9.16 must be construed as if the formula set out in that paragraph were-

$$£1,875 \times \frac{D}{PD};$$

(c) paragraph 9.20(a)(i) must be construed as if the amount specified in that paragraph were £1,875 per month;

(d) paragraphs 9.11(b), 9.15(b) and 9.20(b) must be construed as if the percentage specified in those paragraphs were 60%.

### ***Statutory payments***

30.1 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 must be correspondingly reduced.

30.2 The specified statutory payments for the purposes of paragraph 30.1 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.

***Circumstances in which a CJRS claim may not be made***

31. A CJRS claim must not be made by an employer in respect of a day upon which their employee-
- (a) is on notice of termination of the employee's employment with the employer, or
  - (b) is taking an unpaid sabbatical or other period of unpaid leave.

***Further provision in relation to work for the purposes of CJRS***

- 32.1 For the purposes of CJRS, an employee must be treated as working for an employer if the employee works for a person connected with the employer (see paragraph 40.4) or otherwise works indirectly for the employer.
- 32.2 Time spent undertaking study or training in the period beginning on 1 May 2021 and ending on 30 September 2021 must not be taken to be time spent working for the purposes of paragraph 6.1 and paragraph 27 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.

- 32.3 References to “employer” in paragraphs 32.2 include a person connected with the employer.
- 32.4 In this paragraph and paragraphs 32.5 and 32.6-
- (a) references to a scheme are references to anything falling as an occupational pension scheme by virtue of section 1 of the Pension Schemes Act 1993 or section 1 of the Pension 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 32.4(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 32.4(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.
- 32.5 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 paragraph 27.
- 32.6 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.
- 32.7 Work undertaken by a director of a company must be disregarded for the purposes of paragraph 6.1 and paragraph 27 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.

32.8 For the purposes of paragraph 32.4(e) in relation to Northern Ireland, the reference to section 23(3) of the Pensions Act 1995 must be construed as a reference to article 23.3 of the Pensions (Northern Ireland) Order 1995.

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

- 33.1 A new employer may make a CJRS claim in respect of a relevant transferred employee as if-
- (a) the new employer has a qualifying PAYE scheme, and
  - (b) the relevant transferred employee is a qualifying employee for the purposes of CJRS.
- 33.2 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 2 March 2021.
- 33.3 An employee is a relevant transferred employee if paragraph 33.4 or 33.8 applies in relation to the employee.
- 33.4 This paragraph applies in relation to an employee if-
- (a) before 3 March 2021, the employee was employed by an employer ("former employer") who is not the new employer,
  - (b) after 31 December 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) the employee's former employer made a payment ("the payment") to the employee,
  - (e) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the employer is required to deliver in accordance with regulations 67B or 67D of those Regulations,
  - (f) the return mentioned in paragraph 33.4(e) was delivered to HMRC-
    - (i) after 19 March 2020, and
    - (ii) before 3 March 2021 or, if earlier, the last day of the employee's employment with the former employer before the change in the employee's employer described in paragraph 33.4(b),
  - (g) the employee's former employer has not reported to HMRC a cessation of the employee's employment after the payment (or the latest of such payments if more than one has been made) other than in relation to the change in the employee's employer described in paragraph 33.4(b), and
  - (h) any of the circumstances in paragraph 33.7 apply.

- 33.5 For the purposes of paragraphs 33.4(f) and 33.8(i), a return is delivered to HMRC on the day that the return is received by HMRC.
- 33.6 For the purposes of paragraph 33.4(g), a cessation of an employee's employment must be disregarded if it occurred-
- (a) after 22 September 2020, and
  - (b) before 1 November 2020.
- 33.7 The circumstances referred to by paragraph 33.4(h) 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.
- 33.8 This paragraph applies in relation to an employee if-
- (a) before 3 March 2021, the employee was employed by an employer ("former employer") who is not the new employer,
  - (b) in the period beginning after 31 December 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,
  - (g) the employee's former employer made a payment ("the payment") to the employee,
  - (h) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the employer is required to deliver in accordance with regulations 67B or 67D of those Regulations,

- (i) the return mentioned in paragraph 33.8(h) was delivered to HMRC-
    - (i) after 19 March 2020, and
    - (ii) before 3 March 2021 or, if earlier, the last day of the employee's employment with the former employer before its termination for the reason set out in paragraph 33.8(c),
  - (j) the employee's former employer has not reported to HMRC a cessation of the employee's employment after the payment (or the latest of such payments if more than one has been made) other than termination as described in paragraphs 33.8(b) and 33.8(c), and
  - (k) paragraph 33.10 applies in relation to the employee's former employer.
- 33.9 For the purposes of paragraph 33.8(j), a cessation of an employee's employment must be disregarded if-
- (a) it occurred-
    - (i) after 22 September 2020, and
    - (ii) before 1 November 2020, and
  - (b) the sole or principal reason for the termination of the employee's employment is not the relevant transfer.
- 33.10 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.
- 33.11 For the purposes of paragraphs 33.8 and 33.10, "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.
- 33.12 In relation to Northern Ireland-
- (a) the reference in paragraph 33.7 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 33.10(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.

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

- 34.1 Paragraph 34.2 applies in a case where an employer is unable to make a CJRS claim pursuant to paragraphs 33.1 to 33.12 solely because the employer's PAYE scheme was registered on HMRC's Real Time Information system for PAYE before 3 March 2021.
- 34.2 Where this paragraph applies, paragraphs 33.1 to 33.12 apply as if the employer's PAYE scheme was registered on HMRC's Real Time Information system for PAYE after 2 March 2021.

#### ***PAYE scheme reorganisations***

- 35.1 A PAYE scheme registered on HMRC's Real Time Information system for PAYE after 2 March 2021 ("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.
- 35.2 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.
- 35.3 Where paragraph 35.4 applies in relation to an employee, a CJRS claim made in respect of the employee under this direction must be determined as if the new scheme and the transferred scheme of which the employee was formerly a member were the same scheme.
- 35.4 This paragraph applies in relation to an employee who is-
- (a) a former member of a transferred scheme, and
  - (b) a qualifying employee for the purposes of CJRS by virtue of a payment reported to HMRC under that scheme.

#### ***Duration of CJRS in accordance with the Schedule to this direction***

36. CJRS in accordance with the Schedule to this direction has effect only in relation to amounts of earnings paid or payable by employers to flexibly-furloughed employees in respect of the 7th CJRS direction period.

#### ***Time limit for making CJRS claims pursuant to this direction***

- 37.1 CJRS claims made pursuant to this direction must not be made after the CJRS deadline day relating to the 7th CJRS direction calendar month in which the CJRS claim period of the claim occurs.

- 37.2 The CJRS deadline days are-
- (a) 14 June 2021 in relation to the May 2021 7th CJRS direction calendar month;
  - (b) 14 July 2021 in relation to the June 2021 7th CJRS direction calendar month;
  - (c) 16 August 2021 in relation to the July 2021 7th CJRS direction calendar month;
  - (d) 14 September 2021 in relation to the August 2021 7th CJRS direction calendar month;
  - (e) 14 October 2021 in relation to the September 2021 7th CJRS direction calendar month.
- 37.3 HMRC may accept a CJRS claim made after the relevant CJRS deadline day if-
- (a) there is a reasonable excuse for the failure to make the claim in time, and
  - (b) the claim is made within such further time as HMRC may allow.
- 37.4 A request to amend a CJRS claim to increase the amount claimed at the time when the claim was made may be accepted by HMRC provided the amendment is not made after the CJRS claim amendment deadline day relating to the 7th CJRS direction calendar month in which the CJRS claim period of the claim occurs.
- 37.5 The CJRS claim amendment deadline days are-
- (a) 28 June 2021 in relation to the May 2021 7th CJRS direction calendar month;
  - (b) 28 July 2021 in relation to the June 2021 7th CJRS direction calendar month;
  - (c) 31 August 2021 in relation to the July 2021 7th CJRS direction calendar month;
  - (d) 28 September 2021 in relation to the August 2021 7th CJRS direction calendar month;
  - (e) 28 October 2021 in relation to the September 2021 7th CJRS direction calendar month.
- 37.6 HMRC may accept a request to amend a CJRS claim made after the relevant CJRS amendment deadline day if-
- (a) there is a reasonable excuse for the failure to make the amendment in accordance with paragraph 37.4 in time, and
  - (b) the amendment is made within such further time as HMRC may allow.

***Publication of CJRS claimant details***

- 38.1 HMRC must publish information (the “employer information”) about an employer who has received a payment pursuant to a CJRS claim made under this direction.
- 38.2 The employer information that must be published is-
- (a) the name of the employer or the qualifying PAYE scheme,

- (b) if the employer has a company reference number, that number, and
  - (c) the amount of the CJRS claim made by that employer.
- 38.3 Where HMRC is unable to associate an employer's company reference number with the payment described in paragraph 38.1, HMRC may (without prejudice to any other right to do so) publish the employer information as if paragraph 38.2(b) were omitted.
- 38.4 In relation to the amount of the CJRS claim made by the employer, HMRC may publish an amount that gives a reasonable indication of the claim, rather than the exact amount.
- 38.5 The information must be published by a notice on gov.uk or by such other means as HMRC consider appropriate.
- 38.6 The information must be published-
- (a) in respect of each CJRS claim made by the employer in respect of a CJRS claim period occurring in the 7th CJRS direction period, and
  - (b) within the period of 3 months beginning with the end of the 7th CJRS direction calendar month in which the CJRS claim period of the claim occurs.
- 38.7 No employer information may be published (or continue to be published) by HMRC after the end of the period of one year beginning with the day on which it is first published.
- 38.8 HMRC may withhold the employer information from publication, if they are satisfied that publication will expose any of the following individuals, or any individual living with them, to serious risk of violence or intimidation-
- (a) the employer,
  - (b) in relation to an employer which is a company, a director, officer or employee,
  - (c) in relation to an employer which is a partnership, a partner, officer or employee of the partnership,
  - (d) in relation to an employer which is a limited liability partnership, a member or employee of the limited liability partnership, or
  - (e) in relation to a person who, in their capacity as a trustee of a trust, is an employer, a settlor, trustee or beneficiary of the trust.
- 38.9 If HMRC accepts a CJRS claim made after the relevant CJRS deadline day in accordance with paragraph 37.3, the period of 3 months mentioned in paragraph 38.6(b) begins on the day that the claim is accepted by HMRC.

## **Part 2**

### ***CJRS CLAIMS MADE PURSUANT TO EARLIER CJRS DIRECTIONS***

- 39.1 This Part has effect in relation to CJRS claims made pursuant to earlier CJRS directions.
- 39.2. Paragraph 39.6 applies in relation to a CJRS claim made pursuant to an earlier CJRS direction if-
- (a) paragraph 39.3 applies in relation to the claim, or

- (b) paragraph 39.4 applies in relation to the claim.
- 39.3 This paragraph applies in relation to a CJRS claim made pursuant to an earlier CJRS direction if-
- (a) the earlier CJRS direction requires a relevant formulae provision to be used to determine-
    - (i) entitlement for the making of the claim, and
    - (ii) the amount of the claim,
  - (b) the relevant formulae provision has been applied in the same or a highly similar manner to that set out in paragraphs 9.9 to 9.19 of this direction, and
  - (c) the application of the relevant formulae provision in the manner described in paragraph 39.3(b) is consistent with guidance directly relevant to the claim published by HMRC before the time of the making of the claim.
- 39.4 This paragraph applies in relation to a CJRS claim made pursuant to an earlier CJRS direction if-
- (a) the claim is pursuant to an earlier CJRS direction that does not contain a relevant formulae provision,
  - (b) the amount of the claim has been determined in the same or a highly similar manner to that set out in paragraphs 9.9 to 9.19 of this direction, and
  - (c) the determination of the amount of the claim in the manner described in paragraph 39.4(b) is consistent with guidance directly relevant to the claim published by HMRC before 1 August 2020.
- 39.5 The relevant formulae provisions are -
- (a) in relation to a CJRS claim made pursuant to the third CJRS direction, the formulae set out in paragraphs 16.3 and 16.4 of that direction;
  - (b) in relation to a CJRS claim made pursuant to the fifth CJRS direction, the formulae set out in paragraphs 9.3 and 9.4 of that direction;
  - (c) in relation to a CJRS claim made pursuant to the sixth CJRS direction, the formulae set out in the provision made by that direction corresponding to paragraphs 9.3 and 9.4 of the fifth CJRS direction.
- 39.6 Where this paragraph applies in relation to a CJRS claim made pursuant to an earlier CJRS direction-
- (a) the earlier CJRS direction pursuant to which the claim is made must be construed as if-
    - (i) the direction made the same or similar provision to that made by paragraphs 9.9 to 9.19 of this direction as is necessary for the determination of the CJRS claim as described in paragraphs 39.3 and 39.4 for the purposes of the claim, and

- (ii) the direction made such other necessary or consequential provision for the determination of the claim as described in paragraphs 39.3 and 39.4, and
  - (b) provided the claim is in accordance with the earlier CJRS direction construed as described in paragraph 39.6(a), the claim must be treated for the purposes of CJRS as always having been made in accordance with that direction as so construed.
- 39.7 Paragraph 39.6 does not have effect to prevent a CJRS claim to which that paragraph applies from being abusive or otherwise contrary to the purposes of CJRS.

### ***Part 3***

#### **GENERAL PROVISIONS**

##### ***Definitions etc.***

- 40.1 For the purposes of this Schedule-
- (a) references to-
    - (i) “CJRS claim” are references to a claim made in accordance with this Schedule unless the context requires the reference to be construed as a reference to a claim made in accordance with the first CJRS direction, second CJRS direction, third CJRS direction, fifth CJRS direction or sixth CJRS direction as appropriate.
    - (ii) “CJRS claim period” are references to a claim period meeting the requirements of paragraphs 8.1 to 8.7 of this Schedule unless the context requires the reference to be construed as a reference to a period in respect of a CJRS claim made in accordance with the first CJRS direction, second CJRS direction, third CJRS direction, fifth CJRS direction or sixth CJRS direction as appropriate;
    - (iii) “first CJRS direction” are references 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;
    - (iv) “second CJRS direction” are references to the direction made on 20 May 2020 by the Treasury in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020;
    - (v) “third CJRS direction” are references to the direction made on 25 June 2020 by the Treasury in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020;
    - (vi) “fifth CJRS direction” are references to the direction made on 12 November 2020 by the Treasury in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020;
    - (vii) “sixth CJRS direction” are references to the direction made on 25 January 2021 by the Treasury in exercise of the powers conferred by sections 71 and 76 of the Coronavirus Act 2020;

- (viii) “salary period” are references to a salary period occurring wholly or partly within a CJRS claim period unless the context otherwise requires;
- (ix) “reference salary day” are references to a day that is a reference salary day as described in paragraph 9.19;
- (b) references to the “original CJRS directions”-
  - (i) are references to the first CJRS direction as modified by the second CJRS direction, and
  - (ii) where necessary, must be construed as references to the first CJRS direction before its modification by the second CJRS direction;
- (c) references to the “earlier CJRS directions” are references to-
  - (i) the CJRS directions described in paragraph 40.1(a)(iii) to (vii), and
  - (ii) the original CJRS directions described in paragraph 40.1(b);
- (d) “charity” has the same meaning as it does in section 18 of the Small Charitable Donations Act 2012 (“SCDA”);
- (e) “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;
- (f) “company” has the same meaning as it does for the purposes of the Corporation Tax Acts as set out in section 1121 of the Corporation Tax Act 2010 (“CTA”);
- (g) “day” means a calendar day unless the context otherwise requires;
- (h) “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;
- (i) “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 40.2 and 40.3 of this direction;
- (j) “HMRC” means Her Majesty’s Revenue and Customs;
- (k) “limited liability partnership” has the meaning given by section 1(2) of the Limited Liability Partnerships Act 2000;
- (l) “NMWR 2015” means the National Minimum Wage Regulations 2015;
- (m) “PAYE” means Pay As You Earn;

- (n) "PAYE Regulations" means the Income Tax (Pay As You Earn) Regulations 2003;
  - (o) "SSCBA" means the Social Security Contributions and Benefits Act 1992;
  - (p) "SSCB(NI)A" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - (q) "statutory sick pay" means statutory sick pay payable pursuant to section 151 of the SSCBA or section 147 of the SSCB(NI)A;
  - (r) "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.
- 40.2 Where, by virtue of section 61R of ITEPA (workers services provided through intermediaries to public authorities or medium or large clients: application of Income Tax Acts in relation to deemed employment), 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 for the purposes of section 61R of ITEPA are treated as earnings for those purposes).
- 40.3 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.
- 40.4 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 40.4(a) and 40.4(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 40.4(a) and 40.4(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***

- 41.1 HMRC must take account of any amendment made to CJRS by any other direction under section 76 of the Coronavirus Act 2020.
- 41.2 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.