

From: [REDACTED]
Subject: RE: [REDACTED] - CJRS Treasury Direction para 6.7
Date: 23 April 2020 at 13:08
To: Daniel.Barnett@outertemple.com, [REDACTED]
[REDACTED]
[REDACTED]



Dear Mr Barnett,

Thank you for your email about the Job Retention Scheme. I have picked this up through the policy team and the response is set out below.

The Job Retention Scheme was introduced in extraordinary circumstances and at unprecedented pace to provide vital support to employers and their employees, protecting jobs. The scheme was announced by the Chancellor on 20 March and launched on 20 April. In its first day of operation, applications were received from over 140,000 employers, in respect of over 1,000,000 jobs.

HMRC will act at all times in accordance with the Direction. HMRC's interpretation of the Direction is set out in our published guidance. It is our expectation that customers should consider the guidance in the first instance when seeking to understand the operation of the scheme and HMRC's interpretation of the Direction.

You have asked for clarification about the requirement for employers and employees to agree to commence furlough. I can confirm that we stand by the interpretation that we have articulated in our guidance which is consistent with the Direction.

Employers should discuss with their staff and make any changes to the employment contract by agreement. To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. If this is done in a way that is consistent with employment law, that consent is valid for the purposes of claiming the CJRS. There needs to be a written record, but the employee does not have to provide a written response. A record of this communication must be kept for five years.

Put simply, the employer and the employee must reach an agreement and an auditable written record of this agreement must be retained. It does not necessarily follow that the employee will have provided written confirmation that such an agreement was reached in all cases.

We are grateful for the feedback we have received on both the HM Treasury Direction and HMRC's guidance. We will continue to consider these comments and will provide appropriate clarification if necessary.

I hope that you find this clarification helpful.

Yours sincerely,

[REDACTED]

[REDACTED] to Jim Harra, HMRC Chief Executive and First Permanent Secretary |
Permanent Secretaries' Group | HM Revenue & Customs, Room 2/75, 100 Parliament Street,
London SW1A 2BQ | [MS Teams](#) | 03000 570 111 | [REDACTED]

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From: Daniel Barnett <Daniel.Barnett@outertemple.com>
Sent: 21 April 2020 08:58
To: [REDACTED]
Subject: Attn: [REDACTED] - CJRS Treasury Direction para 6.7

Dear Mr [REDACTED],

By way of introduction, I am an employment law barrister practising from Outer Temple Chambers in London. I run an employment law email update service for approx 28,000 lawyers, judges and HR Professionals . I am also the resident legal expert on LBC Radio.

You may be aware of concern in the legal profession and amongst UK business about the apparent tension between paragraph 6.7 of the Treasury Directive to HMRC, and the HMRC Guidance. Paragraph 6.7 states an employer can only reclaim up to 80% of the employee's salary via the CJRS, amongst other things,:

"...if the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment." (emphasis added)

The current iteration of the [HMRC Guidance](#), dated 20 March 2020, states:-

"To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. If this is done in a way that is consistent with employment law, that consent is valid for the purposes of claiming the CJRS. There needs to be a written record, but the employee does not have to provide a written response. A record of this communication must be kept for five years." (emphasis added)

Earlier iterations of the Guidance were briefer, and simply required notification of furlough rather than needing the employee to agree in writing not to do any work for the employer.

There is some concern that HMRC may, despite the wording of the Guidance, find itself compelled by the wording of the Direction to decline CJRS claims by employers who have not obtained their employees' written consent to not doing any work for the employer while on furlough.

Are you able to provide any comment, or reassurance, as to HMRC's approach, which I can publish to those who receive my updates?

Kind regards,
Daniel Barnett

Daniel Barnett

Outer Temple Chambers

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