HM Revenue & Customs

Coronavirus Job Retention Scheme (CJRS)

Common errors in the calculation of CJRS grants questions and answers

These questions and answers show HMRC's response in relation to common errors in the calculation of CJRS grants for eligible employees. The examples referred to in this paper are not exhaustive but aim to cover general themes and give an indication of HMRC's approach to customers who have calculated grants using a different method to that set out in HMRC guidance.

Q How does an employer disclose an error to HMRC?

If an employer has overclaimed CJRS they should notify HMRC as per the guidance on GOV.UK at Pay Coronavirus Job Retention Scheme grants back. Employers should also follow this guidance to notify HMRC of their intent to disclose any error if they have overclaimed and need more time to work out what they owe.

Q Does HMRC expect claims not calculated in line with the HMRC Direction and guidance to be corrected and the amounts repaid?

We consider that an error has been made that must be corrected if the customer has failed to take reasonable care in following HMRC guidance available at the time of the claim. Where the guidance has changed, HMRC would expect employers to have taken changes in to account in claims made from the start of the following calendar month.

Q If an employer has acted on incorrect HMRC advice do they have to make a correction?

If an employer speaks to an adviser even via webchat, and

- were asked questions by HMRC
- provided HMRC with an honest answer
- have received unambiguous advice and can evidence this.

The customer can stand by that and a correction does not have to be made. HMRC was clear that customers didn't need to look through the legislation and could rely on HMRC advice and guidance.

This is on a customer-by-customer basis and cannot be applied more widely.

Example
The employer contacted the HMRC CJRS webchat service. The employer explained to the HMRC adviser that one of the employees was not on the RTI by the relevant deadline, explaining that this was due to an administrative error and that the employee had been on previous years RTI submissions. Employer also explained that tax and NIC had been fully paid in the period on which the employees claim would be calculated if they had been on the RTI.

The HMRC adviser manually processed the claim for the employee even though they were ineligible under the scheme rules.

Company does not need to correct the error in this circumstance as they sought advice and the HMRC adviser told them that they could make a claim for the employee, providing that HMRC can verify the information from the call from its records and evidence from the employer.

Q If a different method has been used to HMRCs preferred method for calculating reference pay but it is consistent with guidance, does it need correcting?

In the third Direction (25 June 2020) we changed the calculation of reference pay from a 'paid' basis to on an 'earned' or 'payable' basis.

We accept the use of amounts paid/earned/payable other than as required by Direction, both before and after that change, provided the method used is reasonable, consistent and is not abusive, for example, it has not been used primarily to impart an advantage to the employer or employees.

This approach is considered acceptable for all claim periods from 1 March 2020 - 30 September 2021.

Example
Company A pays staff fortnightly in arrears, on a Friday, one week after the end of the fortnightly pay period. Staff are paid an hourly rate and so are variably paid employees. It furloughed its staff from 1 April 2020.

Employees were paid for the 2-week period running from 23 March to 5 April 2019 on 12 April 2019 and fortnightly thereafter. They were paid for the two-week period ending on 3 April 2020, on 10 April 2020.

The following calculations methods would be acceptable, both before and after the change to the Direction in June 2020:

Paid basis: Company A used payments made to employees on 12 April 2019 as the first payment for determining employees' reference pay. They used payments made to employees on 27 March 2020 as the final payment for determining employees' reference pay.

Earned basis: Company A used payments paid on 26 April 2019, earned in period 6 April to 20 April 2019, as the first payment for determining employees' reference pay. They used payments paid on 10 April 2020 (earned in period ended 3 April 2020) as the final payment for determining employees' reference pay.

HMRC would therefore not expect Company A to recalculate reference pay and the CJRS grant.

Q When do NICs overclaims need to be corrected?

Overclaims for the NICs element of the grant do not need to be corrected where the overclaim has resulted from using the reasonable simplification (see below) and the employee is very high paid or has been on Furlough for a short period of time, if:

- there was no evidence of deliberate conduct or serious abuse
- for claims after the guidance was changed, the ceiling for the NICs element of the grant was applied.

The reasonable simplification was a calculation method based on all pay in a salary period rather than the CJRS wage grant amount.

The guidance was updated on 21 May 2020, to clarify that the secondary NICs that could be claimed should not exceed 13.8% of the gross pay grant.

Claims made on or after 1 June that exceeded this cap should be corrected.

Example
A senior employee of Company C earning £20,000 per month was furloughed from April 2020 and claimed for under CJRS.

Company C used the reasonable simplification to determine the amount of Employers' NICs that it could claim in respect of the employee and did not apply the ceiling to the amount of NICs claimable. This resulted in an overclaim for the NICs element of the grant by Company C.

Company C continued to use the reasonable simplification and didn't apply the NICs ceiling after the guidance was changed.

HMRC wouldn't expect Company C to recalculate the grant and repay the overclaim for claims made before 1 June 2020. However, Company C would need to recalculate the grant based on the NICs ceiling and repay the overclaim to HMRC for any claim made on or after 1 June 2020.

Q If a different method has been used to HMRC's preferred method for calculating the unworked hours in the claim period but it is consistent with guidance, does it need correcting?

We accept that it was a reasonable interpretation of the guidance on usual hours that all unworked hours in the claim period for which an employee was furloughed could be included in the calculation and claim for claims made up to 14 September 2020, even where those hours fell after the end of the employee's furlough agreement. Where this leads to a higher claim for example if the employee was off work for some other reason after ending furlough, the claim would not need to be re-calculated or amended.

Incorrect claims made on or after 1 October 2020 should be corrected in line with the guidance.

Example
Company E made a claim for many employees for August 2020. One employee was furloughed up until Fri 21 August, working 2 days per week, returned to work on 24 August, taking 27, 28 and 31 as annual leave.

Although the employee was only furloughed until 21 August, Company E calculated the employee's usual hours for the whole month of August as 147 hours. If the usual/working/furloughed hours had been calculated correctly, to 21 August, only 63 furlough hours would have been claimable.

HMRC wouldn't expect Company E to recalculate the grant in respect of claims made before 1 October 2020.

Q What will HMRC accept for calculating the lookback period for reference pay?

We accept any reasonable interpretation of the corresponding calendar period for the lookback for reference pay purposes, so long as this is applied consistently, or where a change is made in good faith.

For example, this could be the same calendar days in the lookback period or the corresponding pay period.

This approach is considered acceptable for all claim periods from 1 March 2020 - 30 September 2021.

Example
The example of the two acceptable methods of determining the pay for the look back period of an employee of Company D furloughed for a whole weekly pay period of 23 March to 29 March 2020:

Period - Mar 19	Dates (2019)	Pay
4	18 - 24 March	£450
5	25 - 31 March	£250

The preferred HMRC approach is to look for the calendar days being claimed, in the claim period, including non-working days, which are split across periods 4 and 5, so the reference pay would be 80% of (450 * 2/7 + 250 * 5/7) = £245.71

An alternative method accepted by HMRC, is the amount from the corresponding pay period, which is the week of 25 - 31 March 2019, so 80% of £250 = £200. This is provided it is used consistently and is not an abuse of the scheme.

Q What if an employer has not used the higher of the average pay and lookback methodology, for variably paid employees?

If employers have only used one method or the other, without using the method which gives the higher level of pay, they must top up their employees' pay, such that they receive 80% of this higher amount.

Example
Company G furloughed an employee from when they were instructed to cease work on 20 March 2020. Company G consider them to be a variably paid employee for the purposes of the calculation of the CJRS grant. Company G puts a CJRS claim in for April 2020 which included the employee.

Company G uses the Employee's average pay over the period April 2019 to 19 March 2020 to determine the amount of CJRS grant to claim but does not calculate and determine whether their pay in April 2019 (the corresponding calendar period in the previous year) was higher.

Company G must consider the employee's pay in April 2019 and, if greater than Employee average monthly pay over the period April 2019 to 19 March 2020, it must top up Employee's pay for that claim period, so that they receive 80% of the higher amount.

Q Do calculations need correcting if employer has used the fixed pay method for employees with elements of variable pay where they considered this best represented how they were paid?

We accept the use of the fixed pay method to calculate CJRS, for an employer paying fixed annual salary plus significant and variable amounts of non-discretionary payments (commission, shift payment, overtime for example), may be acceptable for claims made before or following the 20 April 2020 guidance up to guidance changes on 7 August 2020, if the employer reasonably considered that this method best reflected how its employees were paid at the time.

HMRC would expect employers to have taken changes in to account in claims made from the start of the following calendar month following guidance change on 7 August 2020.

We do not accept the use of the fixed pay method to calculate CJRS, for an employer paying fixed annual salary plus significant and variable amounts of non-discretionary payments or overtime made after that time.

For example, overtime payments would be considered "significant" if the employee worked overtime:

- in the last pay period ending on or before 19 March 2020
- in the corresponding calendar period to the period you are claiming for
- regularly in the tax year 2019 to 2020.

This should not be an issue for employers using a variable pay method.

Example
A business, Company H, provides tax return services for individuals, remunerated its employee with a basic salary of £24,000 per annum plus overtime of up to £2,000 a month on average in December, January, and February.

Company H furloughed 10 of its employees from 1 March, and calculated grants using the fixed pay method based upon the employees' pay of £4,000 in February 2020 (comprised of basic salary, £2,000 and overtime of £2,000). The pay for 11 months ended 28 Feb 2020 was £27,500 (or £2,500 per month on average) and the equivalent pay in each month in 2019 was £1,900 (except December 2019, which was £3,900).

Employer made claims on the 1st of each month. In the months March to July 2020, Company H claimed the max. of £2,500 per employee per month, plus NICs and pension, using the method for fixed pay. It continued to claim the maximum amount per month in August (£2,500) and September (£2187.50).

Not re-calculating the claims from 1 September onwards is an error that must be corrected. The guidance changes on 7 August show the employer should claim 80% of the higher of the average pay for the period (1 April 2019 to 28 February 2020) of £2,500 and the lookback pay of £1,900. In this example, averaging the overtime using the variable pay method would result in a significant change in the amount of grant that could be claimed. Company H must repay the amount overclaimed.

Q If employer claimed 80% of reference pay after the taper was introduced is a recalculation required?

Yes, a recalculation is required.

Example
Company I had 8 employees and calculated their grant using the fixed pay method. The reference pay used for each employee was £1,500 per month.

In July 2021, Company I did not realise that the taper rate changed and applied the 80% taper rate and claimed £1,200 per employee. The employer should have applied the 70% taper rate and claimed £1,050 per employee.

HMRC would expect Company I to recalculate the grant and repay the £1,200 claimed in error (£1,200 - £1,050) x 8.

Q If the value of benefits in kind provided via salary have been included in calculation of reference pay, does this need to be corrected?

The value of any non-monetary benefits such as benefits in kind (such as a company car), including benefits received in exchange for giving up an amount of pay under a salary sacrifice scheme, should not be included as earnings when calculating reference pay.

Example
Company J calculated their grant using the fixed pay method. They calculated reference pay for their one employee as £2,300 which included £300 under a salary sacrifice scheme in lieu of a company car. Their CJRS claim for December 2020 was £1,840 (80% of £2300).

This non-monetary benefit of £300 should not have been included when calculating wages.

The employee reference pay in this case should have been £2,000 meaning the correct CJRS claim for December 2020 was £1,600.

HMRC would expect Company J to recalculate the grant and repay the £240 (£1,840 - £1,600) claimed.

Supplementary questions affecting eligibility

Q **My employees were furloughed as they could no longer work at my premises because of the effect of COIVID-19. Do I have to show HMRC there was a financial impact on my business?**

The Government announced the introduction of CJRS in the context of a national health and economic emergency expected to affect all employers.

In this context, HMRC would generally accept that any business acting in good faith and instructing employees to cease work as a result of COVID-19 would be doing so because they were affected by the pandemic or the associated economic circumstances.

HMRC will not seek evidence of the effect of COVID-19 on the claimant's business, except as part of a wider enquiry into scheme eligibility, such as employees working whilst being claimed for.

Q **If HMRC identifies an error during an enquiry does it need correcting?**

HMRC will not actively look for cases of innocent error or investigate every instance of potential error as in many cases it will not be proportionate or viable to do so. However, where amounts are identified during an enquiry these may require a repayment to HMRC, even if they result from a non-deliberate error.

Q **If there is no written furlough agreement before a claim is made, is the claim still valid?**

Whilst an agreement must have been made and in effect before the first day of a claim period, HMRC accepts that written confirmation of any agreement can be made later.

We provide a reasonable period of grace of up to three months after the end of each iteration of the scheme, during which written confirmation can still be made without undermining the validity of the claim such as flexible furlough ended 31 October 2020 so the grace period would end 31 January 2021.

Outside of the grace period, if there are no other concerns in relation to employees working whilst being claimed for, wider circumstances can be considered and HMRC discretion can be applied to take no further action in terms of the written agreement.