
STATUTORY INSTRUMENTS

2020 No. 1296

EMPLOYMENT

The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>at 9.00 a.m. on 17th November 2020</i>
<i>Laid before Parliament</i>		<i>at 12.30 p.m. on 17th November 2020</i>
<i>Coming into force</i>	- -	<i>18th November 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 228(4) and 236(5) of the Employment Rights Act 1996⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) (Amendment) Regulations 2020 and come into force on 18th November 2020.

Amendment of the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020

2. The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020⁽²⁾ are amended as follows.

Amendment of regulation 2 (interpretation)

3. In regulation 2(1)—

(a) for the definition of “Coronavirus Job Retention Scheme” substitute—

““Coronavirus Job Retention Scheme” means the scheme of that name established by the Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction, given by the Treasury under sections 71 and 76 of the Coronavirus Act 2020⁽³⁾ on 15th April 2020, as modified from time to time by further Directions given by the Treasury under those sections, to provide

(1) 1996 c. 18.
(2) S.I. 2020/814.
(3) 2020 c. 7.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

for claims to be made in respect of E in relation to any period ending on or before 31st March 2021(4);”,

- (b) omit the definition of “the first CJRS Direction”,
- (c) in the definition of “flexibly-furloughed employee”, for “paragraph 10.1 to 10.3 of the Schedule to the third CJRS Direction” substitute “the Coronavirus Job Retention Scheme”,
- (d) in the definition of “furloughed employee”, for “paragraph 6.1 to 6.12 of the Schedule to the second CJRS Direction, as modified by paragraph 4 of the Schedule to the third CJRS Direction” substitute “the Coronavirus Job Retention Scheme”,
- (e) omit the definition of “the second CJRS Direction”,
- (f) omit the definition of “the third CJRS Direction”.

Amendment of regulation 3 (calculation of a week’s pay in relation to furloughed employees)

- 4. In regulation 3(2)(a) for “31st October 2020” substitute “31st March 2021”.

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial
Strategy

At 9.00 a.m. on 17th November 2020

(4) The Coronavirus Job Retention Scheme established by that direction has been modified by the following directions given by the Treasury under sections 71 and 76 of the Coronavirus Act 2020: the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction given on 20th May 2020, the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction given on 25th June 2020, the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction given on 1st October 2020, and the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction given on 13th November 2020. Copies of the directions can be found at: <https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>. Hard copies are available for inspection, free of charge, at the offices of HMRC at 10 South Colonnade, Canary Wharf, London E14 4PH. In an announcement relating to a policy paper published on 5th November 2020, HM Revenue and Customs stated that the Coronavirus Job Retention Scheme would remain open until 31st March 2021. A copy of that announcement can be found at: <https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme>.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Employment Rights Act 1996 (Coronavirus, Calculation of a Week’s Pay) Regulations 2020 (“the principal Regulations”) set out how a week’s pay is to be calculated in the case of an employee who has been furloughed under the Coronavirus Job Retention Scheme (“the CJRS”), for the purposes of calculating:

- a) any statutory remuneration for time off to look for employment or arrange training;
- b) any statutory notice payment;
- c) any statutory sum resulting from a failure to provide a written statement of reasons for dismissal;
- d) any statutory sum resulting from a failure to comply with an order for reinstatement or re-engagement;
- e) any statutory compensation for unfair dismissal; and
- f) any statutory redundancy payment,

to which in each case they are entitled. They also set out how a week’s pay is to be calculated for the purpose of deciding whether an employee is taken to be on short-time for statutory purposes.

The CJRS was extended by the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction, given by the Treasury under sections 71 and 76 of the Coronavirus Act 2020 on 13th November 2020. These Regulations make amendments to the principal Regulations consequent on the extension of the CJRS.

Copies of that Direction can be found at: <https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>. Hard copies are available for inspection, free of charge, at the offices of HMRC at 10 South Colonnade, Canary Wharf, London E14 4PH.

No impact assessment has been prepared for these Regulations.