
STATUTORY INSTRUMENTS

2020 No. 814

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

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020 and come into force on 31st July 2020.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Employment Rights Act 1996;

“Coronavirus Job Retention Scheme” means the scheme of that name established by the first CJRS Direction, as modified by the second CJRS Direction and the third CJRS Direction⁽¹⁾;

“E” has the meaning given in regulation 3(1);

“the first CJRS Direction” means 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⁽²⁾ on 15th April 2020;

“flexibly-furloughed employee” has the meaning given in paragraph 10.1 to 10.3 of the Schedule to the third CJRS Direction⁽³⁾;

“furloughed employee” has the meaning given in 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;

“furloughed hours”, in relation to E, means those hours that E does not work as the result of an instruction given by their employer for the purposes of the Coronavirus Job Retention Scheme;

“the relevant date”, in relation to E—

(a) means the calculation date⁽⁴⁾, in any case where—

(i) E's working hours under their contract of employment changed, on or after the date on which E became furloughed but before the calculation date, and

(1) 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.

(2) 2020 c. 7.

(3) The concept of a flexibly-furloughed employee is introduced by the Schedule to the third CJRS Direction, and only applies in relation to the period beginning with 1st July 2020 and ending with 31st October 2020.

(4) See sections 225(2) and 226 of the Act for the meaning of “the calculation date”.

- (ii) at the time that change was made, its contractual effect was that the change in working hours was to continue when E ceased to be furloughed or flexibly-furloughed, and
- (b) in any other case, means the date immediately before the date on which E became furloughed;

“the second CJRS Direction” means 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 20th May 2020;

“the third CJRS Direction” means 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 25th June 2020.

(2) Except in this paragraph and paragraph (1), any reference in these Regulations to an employee who is, or has been, “furloughed” is to an employee who is, or has been, a furloughed employee or a flexibly-furloughed employee.

(3) For the purposes of these Regulations, where E becomes furloughed more than once, “the date on which E became furloughed” means the first date on which E became furloughed.

(4) For the purposes of these Regulations, any reference to remuneration varying with the amount of work done includes remuneration which may include any commission or similar payment which varies in amount.