



COVID – 19 Update 15

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Review

So, ok, this is Update 15 within days of Update 14 but at least we're now looking at shorter and punchier documents, tailored around critical 'breaking news', Covid-19 Update Lite!

It should be noted that separate guidance and rules may apply in Wales and Scotland.

It's boring but to reiterate, this update as with all the others is written in good faith, based on an understanding of the current situation using published information which is being updated and clarified all the time. This is such a rapidly changing environment, and many of the topics touched on are not within our normal day jobs but included simply to be helpful.

This update does not then and never can represent definitive advice and should not then be relied on instead of taking proper, full advice informed as to your particular facts.

The gradual relaxation of lockdown continues, with outdoor markets, high street shops, department stores and shopping centres beginning to reopen in June. It's unclear when other essential services like hairdressers and barbers will reopen, along with opticians of course to avoid the need for round trips to Barnard Castle.

Outdoor markets and car showrooms will be able to reopen from 1 June, provided they meet COVID-19 secure guidelines to protect shoppers and workers. All other non-essential retail should open from 15 June, as long as the government's five tests are met, and COVID-19 secure guidelines are followed.

The difficulty with the guidelines of course lies in following them. Dentists closed immediately even for emergency treatments and whilst they will be able to reopen shortly, it's currently unclear to dentists how safety can realistically be achieved. Similarly, guidance issued by a holiday company to cottage owners is so prescriptive as to make holiday lets both uneconomic and too time consuming to follow. So what then?

The final section in this update is the long-awaited insolvency bill. Rushed out, this reform bill is 240 pages long, but as insolvency is not a part of our practice, the summary below has been based on a report published by Leonard Curtis, and our thanks go to them for this. The changes are wide-ranging and important to know. If further advice is required, please get in contact and we would be happy to arrange an introduction.

Finally, restaurants doing takeaways do need to be aware of the differences in treatment for VAT purposes, if of interest do get in touch.

Coronavirus Job Retention Scheme Version 2 (CJRS V2)

The changes have been announced unexpectedly early and will apply a month earlier than anticipated from 1 July. As anticipated, the scheme will allow part-time working, but staff must have been furloughed by 10 June to be eligible. The object, obviously, is not to reduce the strain on the public purse, but has been redesigned to support businesses encouraging staff back to work, or to encourage business to encourage employees back to work. Safe but effective public transport may be key to this for many.

Seriously, one employer has already commented that 80% remuneration for the lower paid to sit at home working on a suntan, does not present much of a disincentive to go back to work.

So now employers will be able to put staff on part-time furlough, claiming the CJRS grant for that portion of their salary. But employers will only be able to claim going forward if they have previously claimed under the pre-1 July scheme.

Employees must have been furloughed under the current scheme (CJRS V1) for them to be eligible for a furlough grant under the revised scheme (CJRS V2). So, in practice, only employees included in a furlough grant claim made before 1 July 2020 can be furloughed under CJRS V2.

As there is a three-week minimum furlough requirement under the current rules, any new furlough period must have started by 10 June 2020 to be complete when the current scheme ends on 30 June and so ensure the employee remains eligible from 1 July.

Employers who have yet to submit claims under the scheme, or for a particular employee, should do so now as a matter of urgency.

The grant for July will be available on the same basis as now (the lesser of 80% of pay and £2,500). The intention then is that the government will reduce its contribution from August to October with a corresponding increase in the employer contribution as follows:

- July - the CJRS will continue to pay 80% of wages
- August - the CJRS will pay 70% and employers take on the other 10%
- September - the CJRS will pay 60% while employers the other 20%

Allowing employees to return to work part-time from 1 July will help with the position where there isn't enough work to justify taking someone off furlough entirely. For the employee, it may reassure those concerned that their jobs may be under threat.

There is a real risk though that any sudden increase in staff costs, without a matching ability to generate revenue, will simply trigger a wave of avoidable redundancies and closures.

The proposed changes also introduce a new limit to the number of staff who can be included based on the maximum included in any single pre 1 July claim. From 1 August the CJRS grant will no longer cover the cost of employers' National Insurance nor pension contributions; employers will be expected to cover the costs.

The CJRS is a grant paid to the employer, and it is this grant which is now being scaled back, the calculation being based on the salary paid for any period while the employee is being furloughed. Their employment rights continue of course.

The revised scheme has many of the same features as the current scheme which runs between 1 March and 30 June 2020, but there will be some significant changes intended to encourage those previously furloughed back to work. In summary, these are:

Further points to note about CJRS V2:

- A new minimum reporting period of one week will apply from 1 August 2020. More frequent claims will not be accepted, but the reporting period can be longer.
- From 1 July, claim periods will no longer be able to overlap months, employers who previously submitted claims with periods that overlapped calendar months will no longer be able to do this going forward, reflecting the above % changes.
- The grant will be based as now, so the employee must be paid the lesser of 80% of their salary and £2,500 per month. The government contribution to the 80% will reduce, to be replaced by the employer.

- From 1 August, the scheme will no longer cover the cost of employers' National Insurance nor pension contributions applicable to the grant.
- The new calculation will apply from 1 July to factor in the cost of hours worked to hours furloughed ratio.
- Employers can claim the grant for the hours their employees are not working calculated by reference to their usual hours worked in a claim period. Further details will be included in future guidance.
- Employers will need to report hours worked and the usual hours an employee would be expected to work in a claim period.
- For hours worked, employees will be paid by their employer subject to their employment contract and employers will be responsible for paying the tax and NICs due on those amounts
- There will be a new maximum limit to the number of staff who can be included on a claim, based on the maximum staff ever included in a single claim under CJRS V1.
- CJRS V2 will end on 31 October 2020.

HMRC is hoping to publish further and more detailed guidance on CJRS V2 on 12 June 2020.

Self-employment Income Support Scheme (SEISS)

A second and final grant is to be made to the self-employed who are eligible for the based on 70% of earnings and capped at £6,570.

HMRC has confirmed the same eligibility criteria will be used to establish self-employed individuals' entitlement to a further SEISS grant; the grant will be 70 rather than 80% of average earnings for three months and the maximum amount will be capped at £6,570, down from the £7,500 for the first grant. Applications will open in August and HMRC expects to publish further guidance again on 12 June.

More than 2.3m claims were made for the SEISS grant, with an average award of £2,900. The first claim period nominally covered March to May and the SEISS portal will close for claims for this period **on 13 July**. An individual does not need to have claimed the first grant to be eligible for the second and final grant.

The government has not extended the scheme to those who were not eligible for the first payment, for example those who had started self-employment since April 2019.

Those claiming both the first and the second grant must confirm that they meet the eligibility criteria, in particular that their business has been adversely affected by coronavirus. HMRC's guidance indicates that this includes being unable to work because the taxpayer is shielding, self-isolating or is on sick leave or has care responsibilities because of coronavirus. It also includes scaling down or temporarily stopping trading because the supply chain has been interrupted, the business has fewer or no customers or staff are unable to work.

Safer Working and Risk Assessment for Transport

A guide has been issued to help organisations, agencies and others (such as self-employed transport providers) understand how to provide safer workplaces and services for themselves, their workers and passengers across all modes of private and public transport.

It outlines measures to assess and address the risks of coronavirus (COVID-19) in the transport sector across England.

Each transport provider will need to translate the principles and examples in this guidance into specific actions, considered alongside legal duties and other guidance produced by the government and the relevant transport regulator for your mode. Transport providers should remain mindful of their obligations under both health and safety and employment legislation. The integrated nature of the UK's public transport system makes it important that transport providers try to co-ordinate their planning and their actions with other providers.

A letter from the Department for Transport and the Health and Safety Executive about access to toilet and washing facilities for drivers making deliveries:

Documents



[Coronavirus \(COVID-19\): safer transport guidance for operators](#)

HTML



[Coronavirus \(COVID-19\): safer transport guidance for operators](#)

PDF, 285KB, 22 pages



[Driver access to toilet and washing facilities - a letter from Department for Transport and HSE](#)

PDF, 85.4KB, 1 page

This file may not be suitable for users of assistive technology. [Request an accessible format.](#)

See also : https://www.gov.uk/government/publications/coronavirus-covid-19-safer-transport-guidance-for-operators?utm_source=c7dacb1f-ece9-45d3-b274-fd4d582c0d4a&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

A guide has been issued to help understand how to travel safely during the Covid-19 outbreak. It provides guidance for walking, cycling, using private vehicles (for example cars and vans), and travelling by taxis and public transport (for example trains, buses, coaches and ferries).

The emphasis is to avoid using public transport where possible trying to walk, cycle, or drive.

See: https://www.gov.uk/guidance/coronavirus-covid-19-safer-travel-guidance-for-passengers?utm_source=1a1d0b56-f551-4924-b859-3ded37fa31d2&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

The guide covers walking and cycling; public transport; taxis and private hire vehicles; private cars and other vehicles; aviation, ferries and maritime transport; international travel. It includes checklists for safer travel.



Covid-19: Getting Tested

The Government has updated its guidance on coronavirus testing, including who is eligible for a test and how to get tested.

https://www.gov.uk/guidance/coronavirus-covid-19-getting-tested?utm_source=14ca7ce2-b9f7-414b-8bef-59a8fc58c8c7&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Insolvency Law

The Corporate Insolvency and Governance Bill (CIGB) was published on 20th May and is designed to help businesses in difficulty that need to restructure, to increase their chances of survival during these turbulent times.

Reform of the insolvency legislation had been planned for some time, but COVID-19 forced squashed a year-long process into just 6 weeks resulting in 240 page Bill with both temporary and permanent legislation that should support a culture of business rescue and restructuring during the current unusual times and beyond.

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Whilst wide-ranging reform of the insolvency legislation had been planned for some time, the unprecedented challenges caused by the COVID-19 pandemic forced the government to

bring the timetable forward and squeeze a process that would normally take over a year into just six weeks and could receive Royal assent at the end of June.

The resulting 240 page Bill contains both temporary and permanent legislation that should support a culture of business rescue and restructuring during the current unusual times and beyond. Given this you can expect many revisions, and clarification by the Courts over time.

Company moratorium

- Allows directors of a struggling company (some such as financial services firms, are excluded) to create a protective breathing space while they attempt to put a restructuring/turnaround plan together
- Known as a “debtor in possession” procedure, the directors remain in control, although their actions are overseen by a “monitor” who must be a licensed Insolvency Practitioner. The monitor’s role is to assess the viability of the plan as well as providing a safeguard to ensure that the directors are acting in the creditors’ interests generally
- The moratorium lasts for 20 business days and can be extended by a further 20 by the directors or up to a year if creditors or the Court agree
- No legal action can be taken while the moratorium is in force, but costs incurred during the moratorium period have to be paid
- Whilst it is intended to be a survival tool by giving directors control, there is no requirement to seek the prior approval of a secured creditor such as a bank or asset-based lender. The bank’s security cannot ultimately be prejudiced and they would still have the right to enforce their security should they wish after the moratorium has expired, but there may be concerns that they could be excluded from key strategic decisions

Restructuring plan

The new legislation allows a company in difficulty, or its creditors or members, to propose a restructuring plan, similar to the existing Scheme of Arrangement, as an alternative rescue option.

Provided a Court approves the plan as being fair and equitable and ensures creditors are no worse off than the next best alternative then it will bind both secured and unsecured creditors (unlike a CVA), including dissenting classes of creditors and members – this is known as a cross-class cramdown. In this way, it is hoped companies can restructure financially and avoid insolvency

Termination / “Ipso Facto” clauses

- New legislation has been introduced to prevent suppliers of goods and services under a contract from terminating supply or amending terms to increase prices where a company enters an insolvency or restructuring process or implements a moratorium. This is similar to the existing rules for utility companies
- It only applies where a formal contract is in place (therefore not to ad hoc orders) and there is a current exemption for suppliers defined as small companies under the Companies Act (maximum of £10.2m turnover, £5.1m balance sheet or average of 50 employees)
- It also excludes financial services providers such as banks
- Supplies during the insolvency period must be paid for
- Suppliers can apply to Court if they feel it causes them undue hardship

Temporary Measures

As noted previously, a number of temporary measures have been brought in as a result of the COVID-19 pandemic. Whilst these provisions are due to run until 30th June (or one month after the Bill comes into force) it is expected, particularly in light of the recent extension of the Job Retention Scheme until October, that these measures will also be extended.

Suspension of wrongful trading liability

As has been widely reported, effective from 1st March to 30th June (unless extended), the wrongful trading rules have been suspended. The threat of personal liability contained within this previous legislation acted as a deterrent to directors from continuing to trade where they had no reasonable prospect of avoiding insolvency. The removal of this threat now allows them to do their best to save a company in these unprecedented times

It should be noted that, although the wrongful trading provisions have been temporarily removed, other similar Insolvency Act provisions covering fraudulent trading, transactions at an undervalue and preferences remain. Furthermore, it does not relieve directors of a general fiduciary duty to act in the best interests of creditors, so care must still be taken. The best guidance is always to document key decisions and take independent professional advice

Statutory demands and Winding Up Petitions

- The new law is intended to temporarily prevent aggressive creditors from using the threat of legal action to enforce payment of a debt at a time of mass financial uncertainty
- It voids statutory demands made between 1st March and 30th June (unless extended)
- It also restricts the issue of Winding Up Petitions from 27th April to 30th June (unless extended)
- It should be noted that this generally only relates to situations where a non-payment is due to COVID-19 and there have been a number of legal cases recently which found in favour of the creditor because the Court felt COVID-19 was being wrongly used as an excuse not to pay a debt that had been outstanding for many months

Companies House Formalities

Other changes have been introduced in relation to compliance with Companies House regulations:

- allowing an AGM or General Meeting to be held by “other means”. This has been applied retrospectively from 26th March therefore any meetings held since then which, to observe the social distancing guidance, did not technically comply with the rules, would not be in breach of the company’s constitution
- Shareholders’ rights to vote are unaffected but they may not be able to vote in person.
- Extension of certain filing deadlines as the government recognise that the current COVID-19 challenges may make it difficult for companies to file statutory documents such as accounts on time