

GUIDANCE NOTES ON PAYMENTS TO SUPPLIERS FOR CONTINGENT WORKERS IMPACTED BY COVID-19

Written 3 April 2020

The Cabinet has produced guidance notes for “Contingent Workers” impacted by COVID-19. This gives Public sector contractors access to the 80% furlough scheme.

IR35 contractors working for public sector organisations through personal service companies who are unable to carry on working due to the covid-19 pandemic are now be eligible for the 80% furlough scheme if their NHS contracts are ongoing.

The scheme is coordinated by the Crown Commercial service.

These can be seen:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877221/PPN02_20-Contingent-Workers-Impacted-by-Covid-19-2.pdf

Purpose of the Guidance notes for Payments to Suppliers for Contingent Workers impacted by COVID-19

The purpose of the Guidance notes for Payments to Suppliers for Contingent Workers is to provide measures that contracting authorities can use to implement with Contingent Workers who have been affected by COVID-19. These measures aim to protect:

- / the livelihood of Contingent Workers and avoiding claims of unnecessary Statutory Sick Pay from the Supply Chain;
- / against the risk that some may attend work when they should be self-isolating, thereby potentially infecting wider teams and the broader general public;
- / against the risk of losing critical workers to jobs in other sectors because they are not getting paid;
- / supplier revenue with the intention of keeping them solvent so they remain a part of our ongoing supply chain in the future.

The premise of the guidance relates to the payment of Contingent Workers if they are unable to work as a result of COVID-19.

The document outlines a series of FAQ'S :

1. Who should use this approach for Payments to Suppliers for Contingent Workers impacted by COVID-19?

The contents of this guidance note apply to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies. Other public sector contracting authorities are encouraged to apply the approach set out in this guidance note.

2. Which category of Contingent Worker is in scope for this approach?

This approach should be applied to all categories of Contingent Workers including:

- / PAYE
- / Umbrella
- / Personal Services Company

3. What if Contingent Workers can work from home?

Any Contingent Worker who can continue to work from home should do so and should continue to be paid in the usual way. Any Contingent Workers who are working in this way but are also dealing with childcare should be afforded the same flexibility as permanent staff in this regard.

4. What are the measures for Payment to Contingent Workers impacted by COVID-19?

If Contingent Workers are unable to work due to COVID-19, for example, due to sickness, self-isolation, or the temporary closure of offices, they should be paid at 80% of their pay rate up to a maximum of £2,500 per month. This should be backdated to 1 March 2020 if necessary, and will be available initially for at least 3 months.

If Contingent Workers are unable to work due to childcare responsibilities now that schools have closed, they should continue to be paid on the same basis as above (80% up to a maximum of £2,500 per month), for up to 7 working days whilst they make alternative arrangements.

5. What is the criteria for Payment to Contingent Workers impacted by COVID-19?

The guidance on payment of 80% up to a maximum of £2,500 applies only to Contingent Workers who cannot work due to COVID-19, for example, due to sickness, self-isolation, or the temporary closure of offices or other workplaces. Some measures have also been outlined for Contingent Workers who have childcare responsibilities that are impacted by COVID-19.

The £2,500 per month cap relates to gross pay, excluding statutory costs such as NI, holiday pay, apprenticeship levy and pension, and supplier margin. These costs should continue to be applied where applicable as normal in addition to gross pay rate to the Contingent Worker.

6. What rate of pay should be used in the case of PAYE Contingent Workers who have not reached their AWR qualifying period for the entitlement to pay parity with a permanent equivalent?

The rate of pay should be 80% (to a cap of £2500 per month) of the rate they were paid before their absence. In accordance with AWR Regulations, the count towards the qualifying period stops for any full week of absence.

7. How do I calculate who exceeds the £2,500 cap?

Any Contingent Worker whose gross pay (exclusive of statutory costs or supplier margin) normally exceeds £3,125 per month will be subject to the cap ($£3,125 \times 80\% = £2,500$). In this case, the work will only get paid a maximum of £2,500.

All calculations to determine whether a Contingent Worker's earnings hit the threshold of £2,500 per month should be based on the number of hours or days they're engaged to work to a maximum of 20 available working days in the month. For hourly paid workers the same principle should apply, by calculating the average daily pay and multiplying this by 20.

Calculations for contingent workers who work part time (for example, 3 days a week) should use the same maximum of 20 working days in the month. In this example the working days over a month would be 12 days.

8. How will payments be administered for Contingent Workers whose usual pay does not hit the £2500 / month cap?

Suppliers will be required to conduct a calculation that allows them to identify and pay the 80% figure. The simplest way to achieve this is for workers to submit a timesheet in the normal manner where possible, but for any period of COVID-19 related absence, timesheet submissions should be for 80% of the normal working hours. This may not be relevant in Wider Public Sector Education and Health organisations.

In the event that the calculation produces a total that cannot be accommodated by the time sheet system then workers should submit a timesheet rounded up to the nearest applicable number of hours / days or part hours / days allowable in the time sheet system.

Suppliers should provide ongoing reporting concerning any payments made to cover COVID-19 absence including tracking any payments that breach the 80% of pay to a maximum of £2,500 per month made as a result of timesheet rounding. Suppliers should work with Contracting Authorities to allow for subsequent balancing reductions in charges and pay to account for any small overpayments made.

Hourly pay example:

- / If a Contingent Workers usual hours are 37.5 per week that is equivalent to 7.5 hours per day. Therefore, a timesheet should be submitted for six hours per day for the absent days due to COVID-19 ($7.5 \text{ hours} \times 80\% = 6 \text{ hours}$).
- / If working part-time, the hours should be amended accordingly. For example, if the normal hours worked each day are five hours per day, a timesheet should be submitted for four hours if absent due to COVID-19 ($5 \text{ hours} \times 80\% = 4 \text{ hours}$).
- / In the event that a Contingent Worker usually works different hours on different days this can be accommodated in the simplest manner possible for the case in question such that the total hours submitted for the week are an accurate reflection of 80% of the normal hours submitted in a normal working week.

Daily pay example:

- / If usual days are 5 per week, 80% is equivalent to 4 days per week. Therefore, a timesheet should be submitted for 4 days for the absent days due to COVID-19 (5 days x 80% = 4 days).
- / If working part time and the usual days are 3 days per week, that is equivalent to 2.4 days per week (3 days x 80% = 2.4 days rounded up to 2.5). Therefore, a timesheet should be submitted for 2.5 days for the absent days due to COVID-19

All suppliers operating under any framework supplying into Central Government are requested to apply the same methodology if possible. If this is not possible then an alternative method of calculation must be agreed.

9. How will payments be administered for Contingent Workers whose usual pay exceeds the £2500 / month cap?

Contingent Workers who are unable to work due to reasons of COVID 19 whose monthly pay means that they would exceed the cap will be required to submit a timesheet. However, their daily maximum earnings will be subject to a cap of £125 per day to a maximum of 20 days in the calendar month, giving a total gross pay of £2,500.

For example, Contingent Workers administered under the Public Sector Resourcing Framework (RM3749) will have a separate work order created with the amended day rate of Contingent Workers £125 per day and Contingent Workers should submit a timesheet for any period of COVID-19 absence using this rate.

In the event that a Contingent Worker who exceeds the cap based on their normal working patterns where those patterns are part time (such as 3 days a week) they should input a time sheet for every weekday (Monday to Friday) over the period they are unable to work as a result of COVID-19 at £125 per day.

For example, in the case of a Contingent Worker who normally earns £300 a day but works only 3 days a week, their normal working pattern would mean they would ordinarily work 12 days in a calendar month based on the maximum 20 available days calculation outlined in question 6. This would take their total gross pay to £3,600. If they are unable to work as a result of COVID-19 for 2 weeks they should input a timesheet for 5 days each week they are off at the rate of £125 per day. This results in reaching the £2500 per month cap.

Using the same example, if the Contingent Worker were unable to work for a period of less than a week (for example due to office closure for 3 days for deep cleaning), they should input a timesheet for each day they are unable to work (3 days) at £125 per day regardless of the fact that they would usually not work on some of those days.

All suppliers operating under any framework supplying into Central Government are requested to apply the same methodology if possible. If this is not possible then an alternative method of calculation must be agreed.

10. How does a Contingent Worker alert their Supplier and end-hirer that they are unable to work due to COVID-19?

The worker should always contact their Supplier in the first instance. They should state the situation highlighting how their inability to work is related to COVID-19. The Supplier should then speak with the manager to whom the worker reports, to determine if provision can be made to work from home. If they can work from home, such arrangements should be made by the manager and payment to the worker will continue as normal. If they cannot work from home, the Supplier will make the relevant adjustments to pay and fees.

Suppliers will be required to maintain an open book which may be subject to audit.

11. What if a Contingent Worker is unable to complete their timesheet?

Contingent Workers should get in touch with their usual contact for payment queries, timesheet access and to report any COVID-19 related absence. All suppliers must make provisions to ensure that payment can continue to be made if Contingent Workers are unable to complete timesheets. Supplier should also make provision to proactively pick up timesheets that have not been submitted by Contingent Workers.

12. What if the manager is unable to approve timesheets?

Suppliers should apply their existing processes in the event that the manager is unable to approve a timesheet to ensure that workers still get paid.

13. What if Contingent Workers have already been paid Statutory Sick Pay? Contingent Workers

If Contingent Workers have already claimed Statutory Sick Pay (SSP) due to COVID-19, Suppliers should instruct them to follow the measures outlined in this document (or such alternative measures that have been made) and make these payments less the value of SSP claimed, in order to bring the total payment to 80% of gross pay up to a maximum of £2,500 per month.

14. Will this apply to all Contingent Workers regardless of their tenure?

This approach applies to all Contingent Workers, whilst they are being supplied under their current assignment, no matter how long they have been in post. The only exception to this would be where Contingent Workers are being let go as a natural end to their assignment (i.e. contract was due to finish and not be extended regardless of COVID 19).

15. What if a Contingent Worker's assignment is coming to an end and there is no intention to extend them?

Contingent Workers would be entitled to this benefit, but only up to the point at which their assignment is due to expire. There is no obligation to extend them if the intention was that their assignment would naturally end.

16. What does this mean for Suppliers and their fees?

All statutory and Supplier margin payments will be payable. For suppliers paying and charging hourly rates, their fees will automatically adjust to 80% based on lower number or hours approved. Suppliers who charge a margin should simply apply their margin to the pay made to the Contingent Worker.

In the case of Suppliers with a fixed fee for Contingent Workers being paid up to the threshold of £125 / day, this should be reduced to be 80% of the total usual fee.

17. Can Suppliers or Contingent Workers claim this back under the Job Retention Scheme as set out by the Chancellor on 20 March or the Self-Employed Income Support Scheme as set out by the Chancellor on the 26th March?

No. This guidance is designed to provide the same levels of support to Contingent Workers and also to support the supply chain through this period. Suppliers should make the arrangements for payment to the Contingent Workers in scope that meet the criteria at 80% of pay to a maximum of £2500 per month in the same way that they usually would. They would then invoice this to the customer as they do today, this must not be additionally claimed back through the schemes set out by the Chancellor.

As detailed above, all Suppliers must keep a record of all payments made to Contingent Workers on the basis described in this guidance and this must be conducted on an open book basis and may be subject to audit.

18. How do these measures get put in place when they need to be called upon?

Crown Commercial Service is working with all relevant CCS and NHS Workforce Alliance Framework suppliers and Industry Bodies. If you have relationships with suppliers outside of these frameworks please ensure you have the appropriate discussions with them and make them aware of the requirements.

19. What if a Contingent Worker works part-time?

The same principle of 80% of pay up to a maximum of £2,500 per month should be applied with specific consideration to guidance as set out in question 7 (for those under the £2500 per month threshold) and question 8 (for those over the £2500 per month threshold) of this document.

20. How do you calculate payment for a Contingent Worker who only works on an ad hoc basis, i.e. On-demand?

This guidance is only applicable for those workers who were performing live assignments at the time at which they became unable to work as a result of COVID-19. In this event, conducting calculations to determine monthly and weekly pay for Contingent Workers who have ad hoc working patterns, Suppliers should conduct a retrospective view of the previous 12 weeks (or as many weeks as the Contingent Worker has been on assignment) to determine the average days or hours worked. This average should be used to underpin the calculation of 80% of gross pay to the £2,500 cap as outlined in above.

21. The Chancellor announced further measures for Self Employed Workers on 26 March, what impact does that have on these measures?

There is no impact on the measures outlined in this guidance.

22. How is this going to be policed?

As part of the national effort to contain the spread of COVID-19 the government has clearly set out that it is each individual's responsibility to self-assess and implement the self-isolation measures as outlined in the government guidance which can be accessed here:

<https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance>

The payment measures outlined in this document are designed to support Contingent Workers in following the guidance in full and, as such, these measures should apply to anyone who self-certifies that they are self-isolating in line with government guidance.

Extracted from Cabinet Office guidance notes:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877221/PPN02_20-Contingent-Workers-Impacted-by-Covid-19-2.pdf