



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Frances Crook
Howard League for Penal Reform
1 Ardleigh Road
London
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MoJ ref: ADR 79502

17th July 2020

Dear Frances

REGISTERING PRISONERS UNDER THE CORONAVIRUS JOB RETENTION SCHEME (CJRS)

Thank you for your letter of 29 June about prisoners and the CJRS or “Furlough Scheme”.

Allowing prisoners to experience the workplace, preparing them for jobs on release, is something we want to promote. Over the last 18 months, Her Majesty’s Prison and Probation Service (HMPPS) has established the New Futures Network (NFN) to encourage better engagement between prisons and employers in the community, and has introduced a new release on temporary licence (ROTL) policy to allow for more workplace ROTL. The research shows that, used appropriately, temporary release reduces reoffending and the changes seem to be working with a 40% year on year increase in work related ROTL in the fourth quarter of 2019.

Naturally, it is important that the experience for prisoners is as close to the real thing as possible, and a work placement that leads to a job immediately on release is perhaps the “gold standard”, but a prisoner in a work placement is not in the same position as the placement provider’s employees. A prisoner’s ability to attend work may be curtailed at any time by the Governor in relation to public safety or security concerns relating directly to the prisoner or the establishment, or in relation to the placement provider. This is at odds with an employer/employee relationship and is why the ROTL Policy Framework requires the prison, placement provider and prisoner to enter into a Memorandum of Understanding (MOU) which is explicitly not a contract of employment and allows for the placement to be terminated by any of the three parties at any time. HMPPS is currently reviewing the policy framework and MOU to ensure that this is correctly understood and applied going forward.

I should underline that we do not accept that prisoners in work placements will be employees. We expect work placements to be conducted under the terms of the MOU set out above and would therefore expect that prisoners are not employees. Based on the documents and information provided in the case to which you refer, it appeared that the prisoner and the placement provider had chosen to enter into a contract of employment and that it was therefore open to the provider to apply to register the prisoner for the furlough scheme. It was also accepted that there might be other such cases, which is why HMPPS wrote to governors on 9 June, so that relevant providers could decide whether to apply.

You have suggested a grace period to allow employers to register eligible prisoners for the scheme if they did not do so by 10 June. We don't think this will be necessary. Employers cannot apply to register employees who had not been furloughed by that date. However, employers have until 31 July to make furlough payment claims in relation to employees who have been furloughed for at least a full three-week period between 1 March and 30 June. To be eligible to make a claim, there must be a written agreement between employer and employee, which can be made after the furlough start date. This means that those employers who have in fact entered into contracts of employment with prisoners and who have furloughed employees for three consecutive weeks between 1 March and 30 June are able to make a claim provided they do so before 31 July.

It is for the employer to decide whether they wish to apply and if they meet all the criteria for the scheme, which are set out here:

<https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

HMPPS wrote to governors on 6 July instructing them to contact ROTL work placement providers to make clear that the deadline for claims under the CJRS is 31 July.

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

RT HON ROBERT BUCKLAND QC MP