

Public Accounts Committee inquiry into the COVID-19 Employment Support Schemes

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 It is widely recognised that the Coronavirus Job Retention Scheme (CJRS) and the Self-Employment Income Support Scheme (SEISS) were introduced at short notice, in a time of crisis, and inevitably the government had to balance speed of delivery with the likelihood of fraud and error. HM Treasury (HMT) and HM Revenue and Customs (HMRC) should be commended for the speed with which they rolled out the key COVID support schemes, and continued to prioritise their delivery during a time of crisis.
- 1.3 Notwithstanding this, both schemes were complex, particularly the CJRS because it required the claimant to determine both eligibility and the amount to be claimed. SEISS increased in complexity as attempts were made to better target support.
- 1.4 Given the complexity of the CJRS, the speed of its introduction, and frequent changes to its rules, the level of errors is not a surprise. It was particularly hard for smaller employers to obtain reassurance from HMRC that they were claiming correctly. We regret that the Treasury Directions given to HMRC provided no discretion for the tax authority to exercise its care and management powers, particularly for cases where employers were acting in good faith and in pursuance of the stated objectives of the CJRS.
- 1.5 More could have been done to limit the number of ineligible claims for SEISS, such as introducing more 'red flags' into the eligibility checker and the claims process itself. Agents were unable to make claims on behalf of their clients, and we believe this contributed to an increase in ineligible claims, and HMRC should reflect on why it was not possible to promptly deliver agent functionality in this instance.
- 1.6 While welcoming the limited extensions to both schemes, we remain disappointed that the government did not do more to fill the gaps in support. Inevitably the schemes had some hard edges and design flaws, but it appears that the government chose not to commit the necessary resources either to fill significant gaps, or to introduce more targeted support schemes which are safer from abuse. This resulted in some individuals receiving little or no support for up to eighteen months.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 The call for evidence broadly addresses three topics:
- a) whether the schemes achieved their objectives to support incomes and the labour market and reached those previously excluded from the schemes;
 - b) how the Departments managed the delivery of the schemes through their later iterations, including attempts to improve the value for money of the schemes by making them more targeted while managing the risk of error and fraud; and
 - c) how HMRC has estimated the level of error and fraud and undertaken compliance work to detect error and fraud.
- 3.2 We have some brief comments on the first and third questions, but the substance of our response will focus on the second question. HMRC themselves are best placed to fully answer the third question.
- 3.3 Our stated objectives for the tax system include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Greater certainty, so businesses and individuals can plan ahead with confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
 - Responsive and competent tax administration, with a minimum of bureaucracy.

4 Whether the schemes achieved their objectives to support incomes and the labour market and reached those previously excluded from the schemes

- 4.1 The original iterations of CJRS and SEISS excluded various categories of individual. The main categories included:
- Newly employed individuals (CJRS)
 - Self-employed with trading profits above the £50k threshold (SEISS)
 - Self-employed with trading income less than 50% of total income (SEISS)
 - Self-employed but made losses (SEISS)
 - Limited company directors (SEISS)

- Freelancers and short-term contractors – including those affected by IR35 (CJRS)
- Newly self-employed (SEISS)
- Newly incorporated ie were self-employed, but now operate through a company (SEISS)
- Those in Self-Assessment who had not filed their 2018/19 SA return by 23 April 2020 (SEISS)

4.2 During the life of the schemes, extensions were made to include those who were previously excluded. For example:

- New parents and military reservists, who would otherwise have failed the original eligibility tests (SEISS)
- Those who started self-employment in 2019-20, and submitted their self-assessment tax return before 2 March 2021 (SEISS)
- Those who commenced employment after the initial cut-off date of 20 March 2020 (CJRS)

4.3 While welcoming those limited extensions of both schemes, we remain disappointed that the government did not do more to fill the gaps in support for some of the larger excluded groups, such as limited company directors and the newly incorporated, who continued to receive negligible or no support from these schemes.

4.4 We recognise that filling these gaps would have been resource-intensive, particularly to minimise the risk of fraud and abuse. It seems to us that the government simply chose not to commit those resources. It would, however, have been helpful if the government / HMRC been clearer over the appetite (or otherwise) to implement additional support schemes for these excluded groups. Several schemes were suggested by various bodies, but it is not clear whether there was any real enthusiasm to implement any new schemes; in the meantime the potential beneficiaries were clinging on to the hope of receiving some support.

4.5 Further, as time progressed, numerous other forms of support became available from a variety of sources (such as the £9,000 per property grant for retail, hospitality and leisure businesses, and the £1,000 Christmas support payment for pubs). It therefore became increasingly difficult to identify, in a co-ordinated way, who had received what support, and therefore who remained in need and to what extent.

4.6 In addition to the broad categories set out above, there were other, more discrete, categories of individual who were also excluded from the schemes unintentionally.

4.7 One such category were Construction Industry Scheme (CIS) (or similar) workers who had completed the wrong pages on their Self-Assessment return: they had completed the employment pages of the return, rather than the self-employment pages. Some had been doing this for several years and had never been told by HMRC that it was wrong, which led to an impression on the worker that their approach was correct. Factors contributing to this error could be the unique position of CIS contractors (meaning that they have amounts withheld from them like an employee under PAYE) and their payment and deduction statements have an 'Employer's Tax Reference' on them, even though they are self-employed. HMRC do not appear to have taken any action to correct or enquire into the incorrectly submitted returns, despite the clear data inconsistencies between the CIS data reported to HMRC by the contractor and the lack of trading profits on the individual tax return, as well as HMRC's lack of RTI data and Class 1 NIC record as compared to the employment income reported on the individual's tax return.

4.8 While these individuals were intended to be covered by the scheme, the SEISS direction was drafted in such a way that, because the tax return had been completed incorrectly, they were not actually eligible. Despite representations from our Low Incomes Tax Reform Group asking HMRC to allow the claims under exceptional circumstances (through the exercise of HMRC's collection and management powers), HMRC have refused to

pay SEISS grants to these individuals. As these individuals were in fact self-employed, and so had no employer, they were not eligible for support under the CJRS either.

5 How the Departments managed the delivery of the schemes through their later iterations, including attempts to improve the value for money of the schemes by making them more targeted while managing the risk of error and fraud

5.1 Coronavirus Job Retention Scheme

5.2 In this section, we illustrate the significant potential for errors in CJRS claims, and the difficulties in obtaining clearance or certainty from HMRC as to their accuracy.

5.3 The CJRS was particularly complicated because it required the employer (or their agent) to identify eligibility for the scheme on an employee-by-employee basis, and calculate the amount to be claimed. Both aspects were complex and, as we illustrate, changed many times over the life of the CJRS. We published guidance on our website to help employers and their agents, seeking to 'plug the gaps' in published guidance. However, notwithstanding this, given the amount of complexity and change, it is not surprising that there were high levels of error and confusion in relation to the scheme.

5.4 The legislative provisions for the CJRS were set out in several Treasury Directions, which we have summarised below:

No.	Date	Period covered	Length in pages	Main elements ¹
1	15 April 2020	1 March to 31 May 2020	12	Initial introduction of the CJRS.
2	20 May 2020	Extension to 30 June 2020	17	Extended the scheme to 30 June, but also made 'clarifications' to the original scheme.
3	25 June 2020	1 July to 31 October 2020	34	Extended the scheme to 31 October, and made substantive changes to the scheme such as the introduction of 'flexi-furlough'.
4	2 October 2020	N/A	6	Set out the legal framework for the Job Retention Bonus (JRB).
5	13 November 2020	1 November 2020 to 31 January 2021	31	Extended the scheme to 31 January 2021, and made substantive changes to the scheme such as shortening the timescale for claims, and publication of claims data. The JRB was withdrawn.
6	25 January 2021	1 February to 30 April 2021	6	Extended the scheme to 30 April 2021, and made 'clarifications' to the original scheme.
7	15 April 2021	1 May to 30 September 2021	41	Extended the scheme to 30 September 2021, and made substantive changes to the scheme such as tapering the level of support in July, August and September.

¹ The various Treasury Directions are summarised at the bottom of this page:

<https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>

- 5.5 As the table illustrates, the scheme changed substantively several times. Its rules were complex; both around eligibility for the scheme, and the calculation of the amounts which could be claimed. Subsequent iterations of the scheme further increased complexity, largely reflected by the length of their Treasury Directions.
- 5.6 During the period covered by the CJRS, published guidance was updated many times. For example, other than updates solely to add translations, there were 50 changes to the guidance page 'Check if you can claim for your employees' wages through the Coronavirus Job Retention Scheme'.² On some days the pages were updated more than once. This was just one of several CJRS guidance pages on GOV.UK, and there were probably several hundred individual iterations of guidance over the life of the CJRS.
- 5.7 At the scheme's commencement, there had been several changes from the initial guidance published on 26 March 2020 before the scheme opened for claims on 20 April 2020. Some of those changes altered the qualifying criteria for the scheme. Many claims were submitted on that first day and they may not have accurately reflected the requirements of the most recently published guidance. Further, the first Treasury Direction was not made until 15 April 2020, and there were inconsistencies between the initial guidance and the Treasury Direction. This confusion at the outset of the scheme will have contributed to mistakes in some early claims. Those claims may also have formed the reference point for subsequent claims, thus compounding those initial errors.
- 5.8 Guidance for software developers was also issued hurriedly, and we understand contained some errors, meaning that the CJRS software also contained errors. Users of such software may have been oblivious to the fact that their claims contained errors, or have simply been unable to decipher how the calculations were undertaken.
- 5.9 This 'real time' approach to implementing policy is unfamiliar, particularly to finance and tax professionals and employers, who are used to a longer and more structured approach to the introduction of new measures, ie typically involving some form of consultation, draft legislation, a Finance Bill and Explanatory Notes, and a Finance Act, with published guidance normally available when the provision takes effect. Those measures also remain static, at least until the next legislative cycle is completed. So, there is a longer period over which to become familiar with detailed rules, and a period of stability for their application.
- 5.10 It is no surprise, therefore, that errors have arisen simply because those making CJRS claims were unable to keep pace with the many changes to the rules, or were simply unaware of them. Indeed, the feedback we have received is that often HMRC staff themselves struggled to keep up with the changes.
- 5.11 Sometimes it simply was not clear whether an error had been made. Large employers with a Customer Compliance Manager (CCM) could gain HMRC's agreement, often on a bespoke basis, as to which calculations and claims were acceptable, and which needed correction. However, smaller employers have no such access to HMRC, and there was no mechanism by which they could obtain reassurance or 'clearance' that what they had done was satisfactory. Many employers who attempted to seek clarification from HMRC waited many months (or gave up waiting) for a response, not knowing whether they would have to find the funds to repay some of the grant they had (correctly in their view) passed on to their employees. Indeed, HMRC informed us that they were not resourced to deal with such correspondence, and that employers' enquiries may go unanswered.

² <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#full-publication-update-history>

- 5.12 After persistence from CIOT and other professional bodies, HMRC finally provided a document to identify common scenarios in the calculation of CJRS grants, and whether they gave rise to errors which required correction.³ While welcome, it only covered a fraction of the matters which created uncertainty.
- 5.13 In the meantime, professional bodies such as the CIOT had to provide guidance to their members on what to do if the member (in their capacity as the employer's agent) identified what they considered to be an error, but their client disagreed, or refused to amend the claim (for example, because they had tried their best and had paid the grant monies to their employees).⁴ This resistance is understandable as many employers relied on the CJRS to keep their staff in employment when they might otherwise have been laid off, and so having to repay grant claims passed on to employees could represent a significant cost, potentially in some cases an unaffordable one. The cost was exacerbated because even a partial, inadvertent underpayment of a furloughed employee's salary could invalidate the entire grant claim for that employee.
- 5.14 The Comptroller and Auditor General qualified their opinion on HMRC's Resource Accounts for both 2020-21 and 2021-22 due to the material levels of error and fraud in the main COVID-19 support schemes. In relation to the CJRS, it is notable that errors account for around half of the revenue losses from the scheme.⁵
- 5.15 Self-Employment Income Support Scheme
- 5.16 In this section we look at whether more could have been done to reduce ineligible SEISS claims.
- 5.17 In contrast to the CJRS, SEISS claimants simply had to consider their eligibility for the scheme, as HMRC calculated the amount of the grant they would receive. This was helpful in preventing arithmetical errors and meant that the claims process was relatively quick and efficient. However, as we will explain, more could and should have been done to bring the eligibility requirements of the scheme to the claimant's attention, which could have prevented ineligible taxpayers from incorrectly claiming the grant(s). This is notwithstanding the excellent engagement HMRC had in relation to the scheme with professional bodies.
- 5.18 The legislative provisions for the SEISS were set out in several Treasury Directions, which we have summarised below:

No.	Date	Period covered*	Length in pages	Main elements ⁶
1	30 April 2020	Three months	7	Initial introduction of the SEISS, setting out the qualifying conditions, and calculation of the SEISS 1 grant.
2	1 July 2020	Three months	6	Sets out the qualifying conditions and calculation of the SEISS 2 grant, and extends the scheme to reservists / new parents.
3	21 November 2020	Three months	4	Sets out the qualifying conditions and calculation of the SEISS 3 grant, introducing a new condition that the business has suffered reduced activity, capacity or

³ <https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/1a68018c-8119-4c9e-b5db-9888e55d8ed0/CJRS%20Common%20errors%20Q%26A.pdf>

⁴ <https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/0e421564-fb33-48f8-b03c-cc00af1246cd/211126%20CJRS%20PCRT%20combined%20-%20CIOT.pdf>

⁵ Figure 11 of the report by the Comptroller and Auditor General on HMRC's 2021-22 accounts

⁶ The various Treasury Directions are summarised at the bottom of this page:

<https://www.gov.uk/government/publications/treasury-direction-made-under-sections-71-and-76-of-the-coronavirus-act-2020>

				demand, and will suffer a significant reduction in trading profits due to the pandemic.
4	7 April 2021	Three months	8	Sets out the qualifying conditions and calculation of the SEISS 4 grant, and extends the scope to those who had submitted their 2019-20 tax return before 2 March 2021.
5	9 April 2021	N/A	1	This corrected a typo in the fourth Treasury Direction.
6	5 July 2021	Three months	6	Sets out the qualifying conditions and calculation of the SEISS 5 grant, introducing the two-tier level of grant dependent upon the expected reduction in turnover.
7	26 July 2021	N/A	2	Modifies the turnover calculation in relation to partnerships.

* while the grant was typically based on three months' worth of annual profits, it was not intended that this reflected a specific period of time.

- 5.19 While the length of the Treasury Directions was much shorter than for the CJRS, the eligibility requirements for SEISS did substantively change several times. The CIOT held several webinars, and published guidance on its website, seeking to explain the various iterations of the scheme.
- 5.20 Like the CJRS, SEISS (and its claims portal) was designed at pace and it was not possible for a taxpayer's authorised tax agent to make the claims on their client's behalf. We recognise that providing agent access would have delayed the roll-out of the scheme (and payment of the grants) in a period of crisis when time was of the essence, so to some extent it was unavoidable. However, an agent's inability to make the claims is likely to have contributed to the level of ineligible claims, and lower levels of subsequent compliance such as reporting the grants on Self-Assessment tax returns. We think that HMRC should review this decision to identify what prevented the prompt introduction of a claims process for agents with a view to ensuring any future scheme of this nature could be accessed by agents.
- 5.21 Because a process was being built for taxpayers themselves to use, it had to be simple and straight forward. Unfortunately, this approach had the unintended effect of encouraging ineligible claims. For example:
- a) HMRC's eligibility checker, which took information from previously submitted self-assessment returns to assess eligibility for SEISS, will have given some 'false positives'. This is because it could only make an assessment based on the backward-looking conditions, even though the claimant also had to meet forward-looking conditions. So, if the claimant had recently ceased self-employment, or incorporated their business, they could still have been told – incorrectly - that they were eligible to make a claim.
 - b) The claims process was very 'affirmative' in nature, encouraging claimants to complete the process, and make the claim, with no obvious mechanism to exit the claim if they were ineligible. There were insufficient 'red flags' in the process to make claimants stop and think, or check boxes to separately confirm that they met each of the individual qualifying conditions. Once completed, the claims process also confirmed that the claim had been checked and would be processed, again reinforcing the perception that the claim was validly made.
- 5.22 Even if you were eligible for the grant, there was no ability to choose to receive just part of it; for example if you had only seen a small impact on your business, you still received the full amount of the grant. While HMRC subsequently introduced a mechanism to voluntarily repay claims (or part thereof), it would have

helped if the original claim could have been voluntarily reduced to reflect the individual's level of need more closely. Conversely, this all-or-nothing approach may also have put people off claiming the grant in the first place, thinking it's 'too good to be true' if it made them better off.

- 5.23 There was also a reluctance on HMRC's part to define terms used in the scheme. The first two SEISS grants were dependent on a business being 'adversely affected' by coronavirus. The Treasury Directions did not define this term, leaving HMRC's guidance to provide limited examples.
- 5.24 Seeking to restrict claims to those who had been financially disadvantaged, the third and fourth grants introduced a requirement for a 'significant reduction in trading profits'. But neither of the Treasury Directions, nor HMRC guidance, advised what constituted a 'significant reduction'.
- 5.25 The fifth grant took this further, by introducing a turnover test which dictated the rate of grant receivable. However, the turnover test did not apply to the period covered by the fifth grant (ie May to September 2021), but to a much earlier period (a period of 12 months beginning in April 2020). This was confusing, and also meant that the level of the fifth grant did not reflect the individual's trading position over the period the grant was intended to cover. So, the additional complexity introduced in the final grant may not have fully delivered the policy of supporting those who needed it the most.
- 5.26 We welcomed that the fourth and fifth grants took into consideration 2019-20 tax return information when determining eligibility and the amount of grant payable. The then Chancellor announced that this extension meant that an additional 600,000 individuals could now claim those grants.⁷ However, the announcement also meant that some individuals who were eligible for, and claimed, the earlier grants, became ineligible for the fourth and fifth grants. This was not widely publicised on Budget Day 2021 when the extension was announced, and so perhaps came as a shock when they tried to claim but were told they were ineligible.

6 How HMRC has estimated the level of error and fraud and undertaken compliance work to detect error and fraud.

- 6.1 We do not have the relevant data to be able to comment on HMRC's estimates. We focus, therefore, on HMRC's compliance activity.
- 6.2 HMRC confirmed that its CJRS compliance and enforcement activity is focused on deliberate non-compliance and fraud, for example stating on GOV.UK that 'we will not be actively looking for innocent errors in our compliance approach',⁸ and in correspondence that HMRC 'will not seek out innocent errors and small mistakes for compliance action'. On the other hand, GOV.UK guidance instructs employers to repay overclaimed grants, with the threat of penalties if they are not repaid.⁹ We have explained above the difficulties for smaller and medium sized employers who sought reassurance from HMRC about their CJRS claims.
- 6.3 Some of our members expressed concerns at HMRC's compliance approach, which (initially at least) seemed to involve request significant amounts of data from employers, rather than one-to-one discussions with the employer (or their agent) to focus on areas of risk. Employers found this approach costly and time consuming, when a more collaborative approach may have yielded better results.

⁷ <https://www.gov.uk/government/speeches/budget-speech-2021>

⁸ <https://www.gov.uk/guidance/pay-coronavirus-job-retention-scheme-grants-back>

⁹ See above link.

- 6.4 We have recently seen the first of what may be many (unsuccessful) tribunal appeals where an employer ‘followed the various guidelines as best it could in a rapidly moving commercial and legislative environment’, but made an error in its claims.¹⁰
- 6.5 We do not criticise HMRC for taking such cases (notwithstanding its published approach to CJRS compliance), but we regret that the Treasury Directions provided HMRC with no discretion to exercise its care and management powers, particularly for cases where employers were acting in good faith and in pursuance of the stated objectives of the CJRS.¹¹
- 6.6 On SEISS, some of the ineligible claims are now being picked up by HMRC’s post-payment compliance activity. We have recently seen the first (unsuccessful) SEISS tribunal case, which reinforces our view that the claims process did not do enough to prevent an ineligible claim from being made.¹²

7 Acknowledgement of submission

- 7.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

3 November 2022

¹⁰ <https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKFTT/TC/2022/TC08543.html>

¹¹ See, for example, the first Treasury Direction, which states ‘The purpose of CJRS is to provide for payments to be made to employers on a claim made in respect of them incurring costs of employment in respect of furloughed employees arising from the health, social and economic emergency in the United Kingdom resulting from coronavirus and coronavirus disease.’

¹² <https://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j12523/TC%2008576.pdf>