

Oury Clark Quick Guides:



The Extended Furlough Scheme



On 10 November 2020, the UK government issued 11 sets of guidance on the operation of the extended furlough scheme. This guide aims to summarise the key aspects of the scheme.



What is the Extended Furlough Scheme?

The scheme is an extension of the Coronavirus Job Retention Scheme (CJRS). It will run from 1 November 2020 until 30 April 2021.

It covers both full and flexible furlough. As a reminder:

- employees may not work while on furlough, as before.
- flexible furlough allows employers to bring employees back to work on a part-time basis, while still being able to claim the furlough grant for the hours the employee does not work. Please refer to our [Flexible Furlough Scheme Guide](#) for further information.

What Financial Support is Available?

The extended furlough scheme will reflect the specifics of the CJRS in August. The Government will contribute 80% of wages (capped at £2,500 per month).

Employers are required to pay the employer NICs and pension contributions on the wages paid to employees. Employers can choose to top up employee wages but do not have to do so (albeit they will need their employee's agreement, see below).

Applicability

As before, the extended scheme is designed to help UK employers whose operations have been severely affected by COVID-19 to maintain their workforce. This allows employers some leeway and is a much easier test to meet than the "viable" pre-condition in the now suspended Job Support Scheme. The wording is included to discourage abuse of the system.

There is no maximum number of employees' that employers can claim for from 1 November 2020. Neither the employer, nor the employee needs to have previously used the CJRS.

Eligibility

As before, the scheme applies to all UK employers (although the Government expects that publicly funded organisations will not use the scheme) who have a PAYE payroll scheme, which is enrolled for PAYE online (this can take up to 10 days), and have a UK bank account.

The employer can claim under the scheme in respect of the following employees:

- Office holders (including company directors);
- salaried members of Limited Liability Partnerships (LLPs);
- full-time employees;
- part-time employees;
- employees on agency contracts (even those employed by umbrella companies);
- foreign nationals working in the UK and subject to PAYE as grants under the scheme are not counted as access to public funds (we understand the extension of the furlough scheme will apply to Tier 2 sponsored foreign nationals but please ensure you take advice in these circumstances so there are no compliance issues);
- nannies if subject to PAYE;
- employees on flexible or zero-hours contracts; and
- apprentices.

Key Points to Note

- **Redundancy:** Employees on furlough can be made redundant, as before.
- **Notice Periods:** Employers can currently continue to claim furlough for employees under notice of termination of employment. However, the Government is reviewing whether employers should be eligible to claim for employees serving their notice periods and will change the approach for claim periods starting on or after 1 December 2020, with further guidance published in late November. Employers considering dismissals should therefore be aware that the costs of notice pay after 1 December may not be covered by the scheme.

- **Holiday:** Employees can take holiday whilst on furlough, as before. Employees should be paid at their full rate of pay for holidays.
- **TUPE:** For any employees who have been TUPE'd into a business, the employees should have been employed by their prior employer on or before 30 October 2020 and transferred from them to their new employer on or after 1 September 2020.
- **Family leave:** Employees that are on maternity or adoption leave but who wish to end their leave early to undertake a period of furlough leave, entitlement to furlough leave will only arise at the end of the usual eight week notice period.
- **Clinically Extremely Vulnerable:** Whilst the UK is in full lockdown, clinically extremely vulnerable employees should not go to work. If they are unable to work from home, they can be furloughed.
- **Employees self-isolating:** The Government has confirmed that employees who are required to self-isolate and cannot work from home should not be furloughed.
- **Sickness absence:** The Government has confirmed that employees who are on short-term absences from work due to sickness should not be furloughed. For employees on long-term sick leave the employer can choose to furlough those employees.
- **Calculations and claiming furlough payments:** The portal was open from 11 November 2020 for claims from 1 November 2020. Please note there is a shorter claim window. Claims for each month must be submitted by day 14 of the following month.

Employee Agreement Required

As before, all employers should ensure that they agree the furlough arrangements (whether full or flexible furlough) with each employee and confirm the terms agreed in writing with the employee. Whilst the guidance indicates that you do not need the employee's express agreement in writing, best practice dictates that you should ask them to sign and return the written furlough agreement or confirm by return e-mail that they agree to the terms of the furlough arrangements. Employers should keep a copy of the agreement for five years.

Do Not Panic, We Can Help!



**Ross Meadows – Partner
Employment and Immigration**

Email: Ross.Meadows@ocsolicitors.com

**Cacy-Leigh Neilson – Associate Solicitor
Employment and Data Protection**

Email: CNeilson@ocsolicitors.com

Furlough Team

Email: Furlough@ouryclark.com



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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

It is advisable to agree a period for which the full or flexible furlough arrangement will be in place and for this arrangement to be reviewed towards the end of the period.

The arrangements can be amended in accordance with the work available to allow the employer the best use of the scheme, however the employer should ensure it keeps note of the hours worked and hours on furlough for each claim period or risk having to pay back the grant.

Employers should be cautious to not use discriminatory criteria when selecting employees to use the full or flexible furlough scheme or come back to work full time.

It is possible to retrospectively put in place furlough agreements to have effect from 1st November, but only where such agreements are in place on or before 13th November 2020.

Furlough Fraud – Government Publication List of Employers using the Extended Furlough Scheme

The Government continues to encourage employees to report Employer fraud. From December 2020, the Government has also confirmed that HMRC will publish the names for companies (including LLPs) and the company registration number of those who have made claims under the scheme from December onwards. This confirms that the Government continues to crack down abuse. The government publications list could have two impacts. As well as tackling abuse it is likely to deter some employers (particularly the larger employers) to use the extended furlough scheme to save money.

What Employers should do now

Consider your workforce arrangements. If your operations continue to be impacted by COVID-19, whereby there is not enough work available for staff, use the extended furlough scheme as a means of retaining your workforce.

We may find that further guidance is issued in due course that changes the rules so watch this space!