



# Flexible Furlough Factsheet

## A high level guide to the changes to the Coronavirus Job Retention Scheme

In this Factsheet, we've referred to the amended scheme starting from 1 July 2020 as the "flexible furlough scheme". You do not necessarily need to be "flexibly" furloughing your staff under the amended scheme. You can still ask staff to remain on "full-time" furlough under the flexible furlough scheme – but, as is known, the level of payments that can be claimed from the government will gradually change in respect of the period after 31 July (see heading "calculation and claim limits" below). We have referred to the current scheme (i.e. that which is open for claims from 1 March to 30 June) as the "previous scheme".

### Headline points

1. From 1 July, flexible furlough periods can last for any amount of time (there is no need for a three week minimum period). However, see point 3 under "claim periods" below.
2. The flexible furlough scheme can be used in respect of employees who have previously been furloughed for at least three consecutive weeks at any time prior to 30 June 2020.
3. The number of employees a business can claim for in any claim period starting from 1 July 2020 cannot exceed the maximum number of employees it claimed for under any previous claim: i.e. employee numbers cannot exceed the single highest number of employees it made a claim for in respect of any of the claim periods from 1 March 2020 to 30 June 2020 (save in respect of an employee returning from statutory parental leave (which covers maternity, paternity, adoption leave, shared parental leave and parental bereavement leave) – see point 2 under "eligibility" below).

### Claim periods

1. After 1 July, employers cannot make claims that "cross" calendar months (i.e. the claim must start and end within the same calendar month), therefore:
  - a. Employers will need to make any final claims in respect of the period up to 30 June under the previous scheme – the deadline for making any such claims is 31 July 2020.
  - b. Any new claims in respect of the period from 1 July – 31 October 2020 must not cross calendar months.
2. Any claim under the flexible furlough scheme must be in respect of a minimum period of seven days (but, of course, the employees that are being claimed for do not have to have been on furlough leave for the full seven days – they can have been working "flexibly"), save that one can claim for a period of fewer than seven days if the period being claimed

for includes either the first or last day of the calendar month (and the business has already claimed for the period ending immediately before it).

3. Where a **previously** furloughed employee starts a **new** furlough period at any time **before** 1 July (even if this is after 10 June), this furlough period must still be for a minimum of three consecutive weeks (i.e. three weeks of "full-time" furlough, as per the previous scheme rules). For example, if a business places a previously furloughed employee on a new period of furlough on 22 June, in order to claim under the scheme for the time on furlough in June, they would need to remain on full-time furlough for a three week period, ending no earlier than 12 July. After that, the business would then be able to flexibly furlough them. Separate claims will need to be submitted to cover the days furloughed in June and the days furloughed in July (even where employees are furloughed continuously).

### Flexible furloughing

1. When claiming for employees who are flexibly furloughed, employers should submit the claim only when they are sure of the exact number of hours employees will have worked during the claim period. If an employer claims in advance and the employee actually ends up being furloughed for less hours than those claimed for, employers will have to pay the relevant amount back to HMRC.
2. For employees who are flexibly furloughed, employers need to work out each employee's usual hours and record the actual hours they work, as well as their furloughed hours, for each claim period. The way you calculate this will vary depending on whether the employee has fixed or variable hours, and the methods can be found towards the bottom of this page [here](#).
3. For employees who are remaining on "full-time" furlough, employers do not need to work out their usual and furloughed hours – the business should instead work out the maximum wage amount it can claim in the usual way.

### Eligibility

1. As before, the scheme is designed to be used if employers cannot maintain their workforce because their operations have been affected by coronavirus. The detailed rules on eligibility should be born in mind (see [here](#)).
2. Employees returning from statutory parental leave after 10 June can be furloughed, provided that: (i) the employer has previously submitted a claim under the scheme for other employees; (ii) the individual's parental leave commenced prior to 10 June; and (iii) they were on the employer's payroll on or before 19 March.
3. Employers can continue to furlough shielding employees and those with caring responsibilities under the flexible furlough scheme (provided that they have previously been furloughed for the minimum three week period prior to 30 June).

### Legal requirements

Variations to working hours constitute a contractual variation to employees' terms in the usual way – therefore agreement from employees must be sought. The guidance confirms that: *"If you're claiming for employees who are flexibly furloughed, you'll need to have agreed the furlough arrangement with the employee (or reached a collective agreement with a trade union) and keep a **written agreement** that confirms the furlough arrangement. The written record of that agreement*

*must be kept for five years.*" This is important for the relationship with the employees as well, so there aren't arguments/claims in the future.

### Record keeping requirements

In addition to the current record keeping requirements under the previous scheme, you will also need to keep a record of the following in respect of flexibly furloughed employees for six years:

- The number of hours the employees would usually work in the claim period.
- The number of hours the employees have or will actually work in the claim period (and the number of hours the employees have or will be furloughed for in the claim period).
- The written agreement regarding the flexible furlough hours, as set out under "legal requirements" (government guidance specifies that this should be kept for five years as per the above, although we would recommend it is kept for six years in light of HMRC's ability to audit).

### Calculations and claim limits

There is an example of how to calculate the amount a business can claim for an employee who is flexibly furloughed [here](#). There is also a calculator that can help businesses work out claims [here](#).

The table below shows the amount of government support available each month – but remember, only hours **not** worked (that would have usually been worked) can be claimed for, so if a business is flexibly furloughing an employee, the amounts that it can claim for them will be less than that in the table below.

	July	August	September	October
Government contribution to furlough wages	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875
Contribution: employer NICs and pension contributions	Government	Employer	Employer	Employer
Employer contribution to furlough wages	Nil (unless "topping up")	Nil (unless "topping up")	10% up to £312.50 (plus any "top up")	20% up to £625 (plus any "top up")

### Concluding thoughts

Whilst the combined effect of the above is like something out of a Kafka novel, we need to remember that for many businesses, without the CJRS, jobs/more jobs would be being lost, and now. Therefore it is worth the pain of understanding and applying the rules: sailing between the rocks of mis-applying the CJRS; not getting consent and creating employee unrest; and the economic challenges of the current world. No doubt the Government will issue more guidance in the coming days and we will update where necessary. In the meantime, we set out below the hyperlinks to the government's publications:

- Check if you can claim under the scheme [here](#).
- Check which employees are eligible for the scheme [here](#).
- Details of the steps to take before calculating the claim [here](#) (this is a new publication).
- Calculating how much you can claim [here](#) and calculation examples [here](#).
- Making the claim, including the link to the portal page [here](#).

- Reporting an employee's wages to HMRC when you have claimed through the scheme [here](#).
- The Treasury Direction has not yet been updated, but you will find the two current Direction publications [here](#).

## Contacts

If you require any assistance, please do not hesitate to contact us.

### Direct contacts



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