

People: Flexible Furlough Scheme @ 29.06.20

On 12th June 2020, the government published more detailed information about the new “**Flexible Furlough Scheme**” (FFS) which comes into effect on 1st July 2020.

As previously advised the Government will retain the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims.

Here goes...

Here are the Detailed #FACTS:

Snapshot Summary

Prior to 1 July 2020, employees on furlough could not undertake any work other than training and volunteering elsewhere and employers could only claim the CJRS grant for employees who have previously been furloughed for at least 3 consecutive weeks taking place any time between **1 March 2020 and 30 June 2020**.

Employers could obtain the CJRS a grant via the HMRC portal to reimburse 80% of wages of furloughed employees, to a maximum of £2,500 per month plus the associated employer national insurance contributions (NICs) and minimum automatic enrolment employer pension contributions due on the subsidised wage.

From 1st July 2020, for fully furloughed employees, there is a staged gradual winding down of the scheme which ultimately ends on 31st October 2020 which starts to remove the ability to claim for the associated NIC and pension costs and which expects employers to contribute towards the 80% or £2500.

There is also an introduction of Flexible Furlough which allows employers to bring back employees to work part time and to be part furloughed.

What is changing from 1st July?

From 1st July 2020;

- Employers will be able to flexibly furlough employees via the Flexible Furlough Scheme (FFS) – this means you can bring your employees back to work for any amount of time, and any work pattern whilst still being furloughed for any contractual non-working time.

- Employees will only be eligible for **flexible furlough** if they have previously been furloughed for at least 3 consecutive weeks taking place any time between **1 March and 30 June 2020**.
- The minimum furlough period under the new FFS reduces from 3 weeks to 1 week.
- You will still be able to claim the CJRS grant for the hours your flexibly furloughed employees do not work, compared to the hours they would normally have worked in that period.
- You will pay for the hours that the employee works and the associated costs. The government is only providing CJRS grant for the furloughed proportion of time.

Who is eligible to be furloughed under the new scheme?

Only employees who have already been furloughed for at least three weeks on or before 30 June under the old scheme can be furloughed after 1 July.

The only exceptions to this are where parents return to work after taking maternity, shared parental leave, adoption, paternity or parental bereavement leave and employees who are military reservists returning from active service.

Duration of Furlough

From 1 July, you will be able to bring back previously furloughed employees for any amount of time and on any pattern of work and claim the CJRS grant for the hours not worked.

For example: if your employee normally works five days a week and you only need them in work for two days, you can furlough them for the remaining three days. If business picks up, you might want them to move to working for three days and be furloughed for two.

The last date anyone could be Furloughed for the first time was 10 June (to qualify for the 3 weeks furloughed by 30th June rule). If you furloughed any employee on that date, you will be able to move them onto the new scheme immediately from 1 July.

However, it is now clear that if you re-furlough someone after 10 June, you will have to wait the full three weeks before you can move them onto the new scheme, regardless of whether this ends after 1 July.

For example: a previously furloughed employee starting a new furlough period on 15th June must remain furloughed under the old scheme until at least 6 July. After this date, the employee can be flexibly furloughed for any period.

Limits on numbers of people you can furlough from 1 July

The numbers of employees you can furlough in any period starting from 1 July **cannot** exceed the maximum numbers of employees you claimed for under the old scheme - although you don't include returning parents in this calculation.

This may create some difficulties if you have already put in place rotating furlough patterns.

For example; if you have divided your 20 strong workforce into two groups of 10 to rotate them on three-weekly furlough, you won't be able to put all 20 workers on flexible furlough so that everyone works half a week.

CJRS Claim Periods

You must submit any claims under the old scheme by **31 July 2020**.

After 1 July, you cannot submit claims that cross calendar months. This means that if you have staff whose furlough spans June and July, you will need to submit separate claims for June and July - even if they have been furloughed continuously.

Your claim period is made up of the days you are claiming a grant for. Claim periods starting on or after 1 July must (usually) start and end within the same calendar month and must last at least seven days.

You must include all furloughed staff in one claim even if they are paid at different times and the Government recommends that, if you can, you should match your claim period to the dates you process your payroll.

One thing to bear in mind is that you can submit a claim up to 14 days before the end of the relevant claim period however because this is based on predicted hours, then if these change, you'll need to adjust the claim next time.

That does not sound too difficult if you've over-claimed, but if you've under-claimed, you'll have to contact HMRC for help. Its recommended that you do not claim until you are sure of the exact number of hours your employees will have worked during the claim period.

Working out pay under the new scheme

If you don't intend to ask staff to return to work, your pay calculations won't change, although your **contribution will increase from 1 August**.

However, if your staff do return to work part-time, you'll need to work out how many hours each employee usually works and off set this from the number or hours they have been furloughed.

First of all, you'll need to decide if your employee has fixed or variable hours. If their pay depends on the number of hours they've worked, or they are not contracted to work a fixed number of hours, use the variable calculation. The Government has provided some examples of how to do this which include:

- Examples of pay periods spanning June/July and July/August
- Example for someone working fixed hours
- Example for someone without fixed hours
- Example for someone working fixed hours who is off sick or on family related leave on/before 19 March 2020

- Example for someone without fixed hours based on average in 2019-20 tax year
- Example for calculating the number of furloughed hours

Examples of calculations can be found at:

<https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages/examples-of-how-to-work-out-80-of-your-employees-wages-national-insurance-contributions-and-pension-contributions>

We have included a couple of these examples within this FACT3 document.

Keeping Records

You'll need to keep a copy of all records in line with the guidance which is six years plus current year, including:

- the amount claimed and claim period for each employee
- the claim reference number
- your calculations
- for employees who are flexibly furloughed, their usual hours including any calculations and the actual number of hours they have worked.

Written Agreement

The guidance states that you need a **"new written agreement"** to confirm the new flexible furlough arrangement.

However, It's not clear if you need separate agreements each time you flex the furlough period (which would be really cumbersome) or if you can make provision for this in one document which provides for flexibility which would make much more sense. Because the guidance is not clear in this respect, our advise is to make the agreement as clear as possible and obtain a signature from the employee that they understand and agree to the new arrangement and that it temporarily varies their contract of employment.

We have provided a Draft letter within the COVID-19 Portal.

Quirky Employment Scenarios:

If employees are on full furlough, rather than "flexible furlough", does the three-week minimum furlough period continue to apply from 1 July 2020?

It's not clear.

Employers can bring furloughed employees back to work on a flexible, part-time basis (known as "flexible furlough"), but they do not have to do so. Employers can continue to furlough their employees on a full-time basis.

The HMRC guide on CJRS makes it clear that the three-week minimum furlough period does not apply from 1 July 2020, where an employee is flexibly furloughed. It states that "agreed flexible furlough agreements can last any amount of time".

While it does not specifically state that this is the same for agreements where the employee is on full furlough, this can be assumed to be the case, as the guidance refers to the three-week minimum furlough period as being in place only until 1 July 2020.

Can an employer "flexibly furlough" employees under the Coronavirus Job Retention Scheme from 1 July 2020 if they had already returned to work in June?

Yes

An employer can agree a "flexible furlough" arrangement with employees who had already returned to work from furlough before 1 July 2020. This is provided that the employees had previously been furloughed for a period of at least three consecutive weeks falling any time between 1 March 2020 and 30 June 2020.

The employer must have previously made a successful claim for the employee under the CJRS.

Making a Claim under Flexible Furlough

To make a claim under the FFS you will need to work out the "**pay period**" and the employee's "**usual working hours**" and record the actual number of hours worked during the furlough period. You can then make a claim under the scheme in respect of the hours the employee is not working.

Working out the Pay Period

Example of a pay period spanning June and July

Employee has a weekly pay period which ends each Friday. For their pay period 27 June to 3 July 2020 the employer will need to submit two separate claims. The employer can choose how to deal with the two parts:

- 27 to 30 June (which can be a claim on its own or the employer can combine into a single claim with the previous week, claiming for 20 to 30 June)

- 1 to 3 July (which can be a claim on its own because it immediately follows the previous claim ending 30 June, or the employer can combine it into a single claim with the following week, claiming for 1 to 10 July)

Example of a pay period spanning July and August

Employee has a 4-week pay period which falls 20 July to 16 August. The employer cannot claim for this as a single period so makes two separate claims:

- 20 to 31 July
- 1 to 16 August

Working out your employee's "usual working hours" and Flexible Furlough hours

Calculating the number of furloughed hours

An employee is furloughed from 1 April 2020 and the employee becomes a flexibly furloughed employee on 10 July 2020. The employer claims weekly, in line with when it processes its payroll.

An employer is looking to claim for the employee for the period 22 July 2020 to 28 July 2020 (1 week). The employer works out the employee's usual hours for this period to be 37 hours.

The employee and employer agree that the employee will work 10 hours in the period 22 July 2020 to 28 July 2020. The employee works 10 hours in that period.

The employer calculates the employee's number of furloughed hours as follows:

1. Start with 37 (the employee's usual hours)
2. Subtract 10 (the number of hours the employee actually worked in the claim period)

The employee is furloughed for 27 of their 37 usual hours.

Example 1; how to work out usual hours for employees who are contracted for a fixed number of hours

An employee is contracted to work for 37 hours in each week, across 5 working days. The employee is paid weekly. The employer looks to make a flexible furlough claim for the period between 1 July 2020 to 10 July 2020 (10 calendar days).

There are two pay periods partially in this claim period:

- 29 June to 5 July
- 6 July to 12 July

The employer calculates the usual hours for the days in each pay period that are in the employer's claim.

The employer first calculates the usual hours for the days they are claiming for in the pay period 29 June to 5 July as follows:

1. Start with 37 hours (the hours your employee was contracted for at the end of the last pay period ending on or before 19 March 2020)
2. Divide by 7 (the number of days in the repeating working pattern, including non-working days)
3. Multiply by 5 (the number of calendar days in the pay period (or partial pay period) the employer is claiming for – this is a partial pay period) = 26.43
4. Round up to the next whole number if the outcome isn't a whole number = 27

The employer next calculates the usual hours for the days they are claiming for in the pay period 6 July to 12 July as follows:

1. Start with 37 hours (the hours your employee was contracted for at the end of the last pay period ending on or before 19 March 2020)
2. Divide by 7 (the number of days in the repeating working pattern, including non-working days)
3. Multiply by 5 (the number of calendar days in the pay period (or partial pay period) the employer is claiming for – this is a partial pay period) = 26.43
4. Round up to the next whole number if the outcome isn't a whole number = 27

For this claim period, the result of each pay period's calculation is added together (27 + 27 = 54 hours).

Example 2; how to work out usual hours for employees who are contracted for a fixed number of hours

An employee is contracted to work on a shift pattern of four consecutive 12-hour days and then have four days off. This working pattern repeats every 8 days. The employee is paid calendar monthly. The employer looks to make a flexible furlough claim for the period 1 July 2020 to 31 July 2020 (31 calendar days). The pay period and the claim period align.

The employer calculates the usual hours for the July pay period by following the steps above:

1. Start with 48 hours (the hours your employee was contracted for in their repeating working pattern at the end of the last pay period ending on or before 19 March 2020 – which in this example, is 12 hours multiplied by 4 days)
2. Divide by 8 (the number of days in the repeating working pattern, including non-working days)
3. Multiply by 31 (the number of calendar days in the pay period (or partial pay period) the employer is claiming for) = 186
4. The outcome of step 3 is a whole number, so does not need to be rounded up to the next whole number

Example 3; how to work out the average number of hours worked in the tax year 2019 to 2020 for an employee who works variable hours

An employee started work for an employer in 2005. The employee is paid every two weeks and was furloughed on 23 March 2020.

The employer calculates that the employee worked 1,850 hours between 6 April 2019 and 22 March 2020. This includes any hours that the employee received holiday pay for.

The employee will be paid for the pay period 1 July 2020 to 14 July 2020, and the employer is looking to make a flexible furlough claim for the same period (1 July 2020 to 14 July 2020).

The employer works out the average number of hours worked in the tax year 2019 to 2020 as follows:

1. Start with 1850 (the number of hours worked (including paid leave) in the tax year 2019 to 2020 before the employee was furloughed)
2. Divide by 352 (the number of calendar days the employee was employed by the employer in the tax year 2019 to 2020, up until the day before they were furloughed)
3. Multiply by 14 (the number of calendar days in the pay period (or partial pay period) which the employer is claiming for) = 73.58
4. Round up to the next whole number because the outcome isn't a whole number = 74

The employer will also need to work out the usual hours based on the corresponding calendar period in the tax year 2019 to 2020, and use the higher figure for the usual hours.

At **FACT3** we have created template letters which:

- o Looks to seek the employee's agreement to return to work on Flexible Furlough; AND
- o Letter confirming an employee's agreement to flexible furlough
- o Letter reminding an employee to sign and return their written agreement to flexible furlough
- o **These letters can be found in our COVID-19 Portal.**

Once an employee has returned to work, you can furlough them.

Caution: Employers should seek HR advice on these matters before acting as the usual unlawful deductions from earnings, breach of contract, unfair dismissal, equality and discrimination laws will apply in the usual way.