



COVID-19 RESPONSE

In partnership with [A&L Goodbody](#)

Workforce planning – restructure, retention and redundancy advice for employers

20 August 2020

Gareth Walls & Jonathan Simpson

Job Retention Scheme: Update on extension

Summary of Changes

- The Scheme continues to change and from **1 July 2020** furloughed workers can return to work on a flexible, part time basis.
- Employers can still claim a percentage of wages (subject to a cap) but will have to pay employees in full for any hours they work from 1 July 2020.
- Eligibility rules also changed. Employees can only be furloughed after 1 July if they:
 - Had already been furloughed for at least 3 consecutive weeks between 1 March and 30 June 2020; or
 - Return from statutory parental leave after 10 June 2020.
- There is no longer a minimum furlough period from 1 July 2020.
- From 1 July the number of employees included in a single claim made under the Scheme cannot exceed the highest number of employees included in any claim submitted prior to this date (excluding those returning from parental leave).

Summary of Changes

- The financial support available under the Scheme will also be reduced over coming months:
 - From **1 July**: Employers must pay wages in relation to any hours worked by a furloughed employee, plus associated employer's NIC and minimum pension contributions in relation to hours worked;
 - From **1 August**: Employers cannot claim a grant in respect of any employer's NIC or pension contributions;
 - From **1 September**: the grant reduces to 70% of wages, subject to a monthly cap of £2,187.50; and
 - From **1 October**: the grant reduces to 60% of wages, subject to a monthly cap of £1,875.
- In each case the Employer **MUST** top up to 80%

JRS: Key Issues

- **Notice Pay**
 - Claims can be made in relation to employees under notice of termination.
 - Payments in Lieu of Notice (PILON) are not covered.
 - Redundancy terms must be no less favourable because of furlough:
 - Notice pay – top up?
 - Statutory Redundancy Pay based on full salary not furlough rate.
- **Fraud**
 - HMRC are taking enforcement action – first arrest in July on basis of allegedly fraudulent claims amounting to £495,000.
 - 7,791 reports of fraud are being investigated as of 7 August 2020.
 - Guidance on .gov.uk website on how employers should approach situations where they have over-claimed.

JRS: Key Issues

- **Job Retention Bonus Scheme**
 - Employers will qualify for a £1,000 bonus in relation to workers brought back from furlough.
 - Eligibility criteria apply, Employees must:
 - remain continuously employed from end of October 2020 through to end of January 2021.
 - Earn an average of £520 per month over this period.
 - Must have earned something during each of these months, recorded through HMRC Real Time Information.
 - Must not be serving notice that started before 1 February 2021 .
 - Will be paid in **February 2021**

JRS: Practical Steps

- Communicate effectively with staff on furlough about any changes that affect them.
- Re-confirm any contractual changes with employees who will return to work part-time.
- Review sustainability of any discretionary “top-up” payments in light of reductions to the grant, & budget for obligatory ‘top-up’ payments under the Scheme.
- Review the calculation methodologies in the guidance, particularly to ensure you understand how claims will be made for any staff returning to work part-time.
- Review historical claims to ensure they were correct.
 - Any overpayments under the scheme should be addressed through adjustments to future claims.
 - Underpayments can be claimed but HMRC will carry out additional checks.

Government Guidance on Returning to Work

Government Guidance

- UK Government: **“Working Safely during Coronavirus (COVID-19)”**
- Northern Ireland:
 - **COVID-19 Working through this together – A Practical Guide to Making Workplaces Safer.**
 - **Priority Sectors List**

ALSO Industry Specific Guidance:

- **NI Food & Drink – Good Manufacturing Practice Covid-19**
- **British Retail Consortium – Recommended Implementation Practices for Warehouses and Distribution**
- **Construction Leadership Council - Site Operating Procedures**

Note: Public Health England as of 17/8/2020 is being replaced so this is very fluid.

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Key Principles & Practical Steps

Health & Safety Obligations

- *The Health and Safety at Work (NI) Order 1978* and subordinate Regulations;
Employers “must ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”
- *The Health Protection (Coronavirus, Restrictions) (Northern Ireland) Regulations 2020 (as amended)*
 - These govern the specific approach to the closure of certain businesses/public facilities and are reviewed by the Department of Health at least once **every 21 days**.
- Employers must do everything ‘reasonably practicable’ to ensure that people working in or visiting your premises are not exposed to risks to their health including exposure to COVID-19

Risk Assessments

1. Review

Review existing arrangements for risk management.



2. Statutory requirement

Regulation 3 MHSW Regs: “*Where there has been a significant change in the matters to which it relates..*”



3. Principles of prevention

Does the correct application of these require me to review or re-write my risk assessments?



4. Question

How can this be done more safely?
Can I remove the risk altogether by using a different method of work?
Should someone be doing this work at all?



5. Innovate

What new ways of working can be devised to ensure safe working in the COVID-19 world?



Potential Liability



Return to Work Planning

COVID-19 – response plan

1

- Who is to take responsibility?
- Appointment of worker representative
- Employee survey
- Appropriate membership of steering group: HR, Building Services, Finance, IT.

Building management

2

- General health and safety obligations
- Risk assessments
- Effective controls
- Covid response plans
- Working from home

People management

3

- Management team
- Employee communication: initial and ongoing
- Criteria for attending office
- Support for vulnerable employees

Access and attendance monitoring

4

- Work patterns
- Management of suspected cases
- Temperature checking
- Changing terms and conditions/policies

People Management – Specific Issues



01

**Contact
tracing**



02

**Employee
travel abroad**



03

**Criteria for returning
to the office**

Employees Returning to Work



Business needs



Take into account worker's individual risk factors
(e.g. older workers, presence of underlying medical conditions
etc.)



Where selection of employees is necessary be fair,
transparent and objective

Workplace Policies

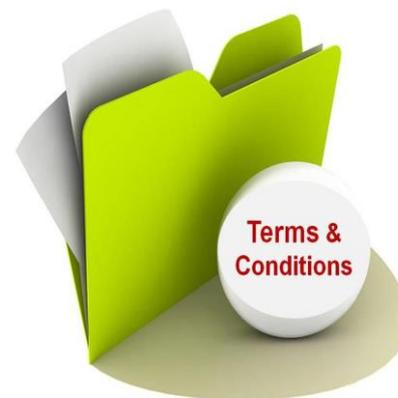
- 1 Sick leave/absence management
- 2 Data protection
- 3 Remote working
- 4 Grievance and disciplinary
- 5 Annual leave

Changing terms and conditions

- Flexibility clauses
- Consent
- Returning furloughed workers onto flexible furlough
- Any other changes to terms and conditions

- Terminate and re-engage
- Collective consultation engaged?

- Redundancy considerations



What if an employee refuses to return to work?

01

**Understand
their reasons**

02

**Employees may
need
reassurance**

03

**Employers should
be reasonable
and flexible**

04

**Flexible working
may need to be
explored**

05

**Disciplinary
action? – Last
resort**

Caution!!

“in **circumstances of danger** which the **employee reasonably believed** to be **serious and imminent** and which he **could not reasonably have been expected to avert**, he left (or proposed to leave) or (while the danger persisted) **refused to return** to, his place of work or any dangerous part of his place of work”

- **Article 68 Employment Rights (NI) Order 1996 – protection from detriment**
- **Article 132 Employment Rights (NI) Order 1996 – automatic unfair dismissal**

Business Restructuring – Employment Implications

Business Restructuring

1. Changes to corporate structure
2. Changes to the operational structure

Key implications:

- TUPE – obligations to inform & consult
- Redundancies
- Changes to terms & conditions of employment

Key principles:

- Communication
- Consultation
- Contractual provisions

Workforce Planning Issues - Redundancies

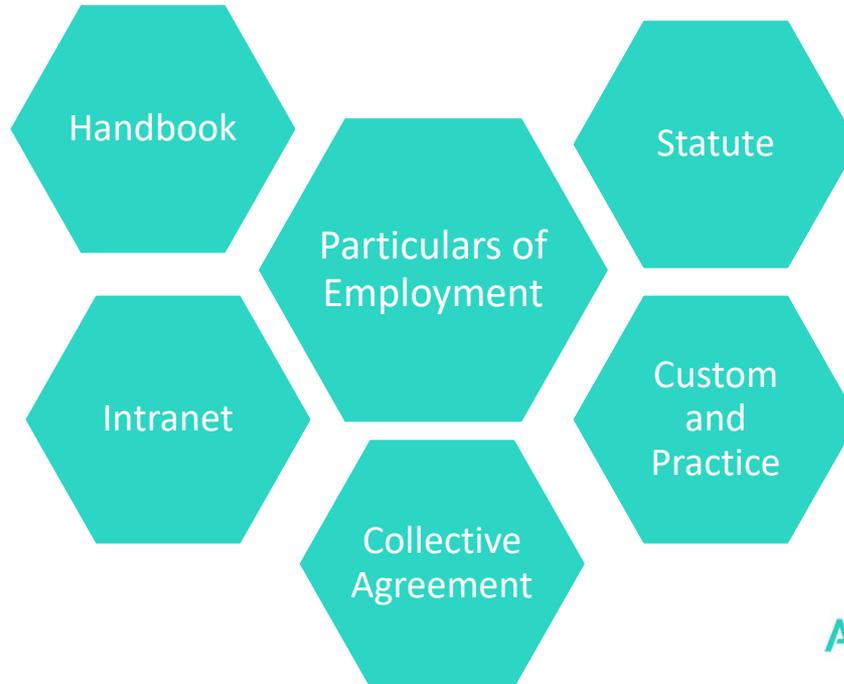
Redundancy – 3 Key Scenarios

1. **Business Closure:** Ceasing or intending to cease to carry on the business for the purposes of which the employee was employed by it (Article 174(1)(a)(i) Employment Rights (NI) Order 1996 (ERO));
2. **Workplace Closure:** Ceasing or intending to cease to carry on that business in the place where the employee was so employed (Article 174(1)(a)(ii) ERO); or
3. **Reduced requirement for employees:** Having a reduced requirement for employees to carry out work of a particular kind or to do so at the place where the employee was employed to work (Article 174(1)(b) ERO).

Key Concepts: Contract

Express Terms

Implied Terms



Redundancy – Underlying Principle

- **Compulsory Redundancies** are the **last possible resort** and all other alternatives should be exhausted before making a role redundant.
- This is a **continuing obligation**, which exists throughout consultation and contractual notice period to the last date of employment.

Avoiding Redundancies

- Coronavirus Job Retention Scheme?
- Recruitment freezes
- Reduced hours
- Pay cuts
- Flexible working
 - Job sharing
- Reduced agency staff
- Unpaid leave (sabbatical?)
- Lay-off or short time working
- Voluntary redundancy



Redundancy – Notification & Consultation

- Timetable
- Selection Matrix
- Suitable Alternative Employment
- Individual/Collective Consultation

Redundancy – Selection Criteria

- Objective and measurable
- Non-discriminatory
- Try to get employees' agreement to them before using them

- Examples:
 - LIFO
 - Performance
 - Attendance

- *Gwynedd Council v Barrett*
 - Competitive Interview?



Collective Redundancies

Notification and Consultation (Article 216 ERO)

- ‘Where an employer is proposing to dismiss as redundant **20 or more** employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals’
- What about voluntary redundancies?
- Special circumstances defense
- NB: In GB, the collective consultation shall begin at least **45 days** before the first dismissal takes effect.

Collective Redundancies

Notification and Consultation (Article 216 ERO)

- Employer must consult "in good time" and in any event:
 - where **100** or more redundancies proposed, at least 90 days before first dismissal takes effect
 - where between **20 and 99** redundancies proposed, at least **30 days** before first dismissal takes effect
- Notification to Government Department.
- Election of Employee Representatives

- **Key: How many employees is an employer proposing to dismiss?**

Collective Redundancies

Employee Representatives

- These are people:
 - specifically elected for redundancy consultation or
 - who have authority to receive information and be consulted about proposed dismissals on behalf of affected employees (e.g. TU Reps)
- Build in extra time to allow for election of employee representatives'
- Election can take a number of weeks, but can also be completed in a number of days.
- Collective consultation cannot start until representatives are in place.



(Collective) Redundancies + Information

Collective Consultation

- Employers must disclose the following information to employee representatives:
 - reasons for proposals
 - numbers and description of employees it proposes to dismiss as redundant
 - proposed method of selecting employees and carrying out the dismissals
 - proposed method of calculating amount of any enhanced redundancy payments
 - Information about agency workers working temporarily for it
- Employers must then consult with employee representatives about ways of:
 - *avoiding dismissals*
 - *reducing the number of employees to be dismissed*
 - *mitigating the consequences of dismissal*

(Collective) Redundancies - Costs

- **Obligation to notify the Department for the Economy**
 - Criminal offence
 - Form HR1
- **Protective Award** - 90 days' gross pay per employee.
- **Unfair dismissal**
- **Discrimination**
- **Social Media & Traditional Media**
- **'Chill' factor** – how to attract future talent?
- **'Chill' factor** – how to attract future investment?
- **Trade Union interest.**

Questions

Support and signposting

IF CORONAVIRUS AFFECTS YOUR BUSINESS HELP IS AVAILABLE

For advice, visit
www.nibusinessinfo.co.uk/coronavirus

A&L Goodbody People Services Careers Offices

WELCOME

COVID-19 (Coronavirus)

With circumstances surrounding COVID-19 evolving daily, we are very aware of the challenges for our people, clients and business community in Northern Ireland.

Our multi-disciplinary teams have been actively monitoring developments across all sectors & have provided practical legal guidance & latest thinking in a dedicated Northern Ireland COVID-19 Hub.

VISIT HUB

WEBINAR:
JOB RETENTION SCHEME



COVID-19
WEBINAR SERIES

Invest Northern Ireland