

1. Introduction and Summary

This note ('Supplementary Note') is the fourth in a sequence of notes supplementing guidance first published by the OGP on 12 February 2021.

On 30 March 2021, the government announced the extension of the closure order¹ from 5 April 2021 to 4 May 2021. In consideration of the financial burden associated with this further extension to the closure order, the OGP recommends that Employers consider making ex gratia payments to affected Contractors for the period between 6 April 2021 and 4 May 2021.

This Supplementary Note has been drafted in order to assist Employers in extending the scheme of ex gratia payments previously recommended in the OGP Guidance of 12 February 2021 until 4 May 2021. The guidance in this Supplementary Note applies to all standard forms of public works contract entered into either before, on, or after 14 April 2020.

2. Previous OGP Guidance

Unless otherwise specifically amended or superseded by this Supplementary Note, Employers should continue to follow the guidance issued by the OGP on 12 February 2021 and subsequently expanded by Supplementary Notes 1, 2, and 3.

Employers should note that the model forms of Covid-19 Site Closure Supplemental Agreement (published by the OGP on 26 February and 5 March) may be used, as set out in this Supplementary Note, to make further ex gratia payments for any applicable period of site closure between 6 April 2021 and 4 May 2021.

3. Extension of Relevant Closure Period

For the purposes of clause 2.2 of the Covid-19 Site Closure Supplemental Agreement, the Relevant Closure Period (as defined in Supplementary Notes 1 and 2) may be adjusted to accommodate for the extension of the closure order until 4 May 2021. This adjustment may be made by replacing section 3, sub-paragraph (b) (the cessation date) of Supplementary Notes 1 and 2 as follows:

(b) cease to apply from the earlier of

(i) midnight on 4 May 2021; or

(ii) the permitted date of re-opening of the Site

The commencement date of the Relevant Closure Period remains unchanged.

Employers should note that, in accordance with the Government announcement on 30 March 2021 concerning the phased easing of public health restrictions, all residential, early-learning, and childcare construction projects will be permitted to re-start from 12 April 2021. Any such earlier date of permitted site re-opening must be taken into account when determining the Relevant Closure Period for ex gratia relief.

¹ The closure order, as defined in the OGP Note of 12 February 2021, commenced on 8 January 2021.

4. Calculation of Ex Gratia Payment

The permissible costs for ex gratia payment for the period between 6 April 2021 and 4 May 2021 should be calculated according to the methodology in either Supplementary Note 1 or Supplementary Note 2, as determined by when the contract was made.

END NOTE