

## CORONAVIRUS – JOB RETENTION SCHEME EXTENDED FAQS

Coronavirus Job Retention Scheme (CJRS) has been extended until 31<sup>st</sup> March 2021. The original CJRS was due to end on 31<sup>st</sup> October, with the introduction of the Job Support Scheme from 1<sup>st</sup> November. Since the announcement of the extension, the government have released guidance for CJRS.

On 13<sup>th</sup> November, the government issued treasury direction for section 71 and section 76 of the Coronavirus Act and modified the CJRS. The direction sets of the scheme that applies between 1<sup>st</sup> November 2020 and 31<sup>st</sup> January 2021. The scheme applying after 31<sup>st</sup> January 2021 will be set out on a further direction. The job retention bonus has been withdrawn.

The Extended CJRS (furlough scheme) is more generous than it was in October. The level of grant mirror's levels available in August 2020 where the government paid 80% of wages up to a cap of £2500.

Employees will receive 80% of their current salaries for the hours not worked up to a maximum of £2500. The cost for the employers retaining workers will be reduced compared to CJRS which ended on 31<sup>st</sup> of October 2020.

Employees may be placed on full furlough or flexible furlough. Employers can agree working arrangements with the employees as previously in the CJRS. Flexible furlough arrangement may continue, this is where employees work some hours. Alternatively full furlough may apply. Employees can be on any type of employment contract. Employees who are shielding or need to stay at home with someone who is shielding can be furloughed unless they can work from home.

Any employees who were on the payroll on 23<sup>rd</sup> September 2020 and were made redundancy or stopped working for the employer after this date can be reemployed and claimed for. Please note the usual employment rights would apply and therefore employers should consider this option carefully.

NOTE – employers are no longer able to retrospectively agree to put employees in furlough from 1<sup>st</sup> November; this opportunity ended on 13<sup>th</sup> November.

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. Employers must pay employers national insurance and pension contributions. The government will review the furlough grant payments in January 2021 when employers may be asked to make additional contributions.

The official guidance states businesses will need to:

- designate affected employees as 'furloughed workers,' agree and notify employees in writing of this change - changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation
- submit information to HMRC about the employees that have been furloughed and their earnings through the online portal

**\*Please read these FAQs in conjunction with the official guidance for [employers](#) and [employees](#). The following material is provided only as a guide and is not legal advice. You are strongly advised to seek advice from a qualified legal practitioner regarding your individual circumstances.**

You can access support through the employment telephone advice line or by email [hello@questcover.com](mailto:hello@questcover.com) or Phone: 01455 852028.

Full details are available on the Gov UK website - <https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme#interaction-with-other-coronavirus-job-schemes>

| <b>Question</b>   | <b>Answer</b>  |
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| <p>1. <b>HMRC PUBLISH INFORMATION</b></p>   | <p>The HMRC will publish information about the CJRS claims on the internet. This will include the employer name and a reasonable indication of the amount claimed. This is mandatory unless the employer can show the exposure would cause 'serious risk of violence and intimidation' to their workforce.</p>   |
| <p>2. <b>EVIDENCE</b><br/>How do employers' evidence to HMRC that an individual is a furloughed worker?</p> | <p>A schedule of furloughed workers must be produced and submitted to HMRC through the portal created for this purpose. The following information will need to be included:</p> <ul style="list-style-type: none"> <li>• Business PAYE reference number</li> <li>• The number of employees being furloughed</li> <li>• The claim period you are claiming for, start and end date</li> <li>• Full name of employee</li> <li>• Employee NI number</li> <li>• Your Corporation Tax Unique Taxpayer reference or Company registration number (or your Self-Assessment Unique Taxpayer reference)</li> <li>• Payroll number for the employee (optional)</li> <li>• Amount claimed. Remember to keep your salary calculation as HMRC will retain the right to audit</li> <li>• Your company bank account number</li> <li>• Your contact name</li> <li>• Your phone number</li> </ul> <p>After submission, you must keep a note of the reference number issued as there will be no other confirmation issued by HMRC.</p> |
| <p>3. <b>REIMBURSEMENT</b><br/>In what time frame will firms be reimbursed for furloughed workers?</p>      | <p>This will be via a grant from HMRC (not a loan). The portal went live on 20 April 2020 and is available to all UK employers who have a UK bank account and UK PAYE payroll scheme.</p> <p>Employers do not have to have claimed before for the furlough payment.</p> <p>From 1<sup>st</sup> November 2021 there is no maximum limit in the number of employees the employer can claim for.</p> <p>HMRC will check the claim and provided you are eligible will pay into the nominated bank account by BACS.</p>   |

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|  | <p>HMRC aim to make the payments to the nominated bank account six days after receipt of the claim provided your claim matches records that they hold for your PAYE scheme.</p> <p>You must retain all your claim records for 5 years as HMRC retain the right to audit. Any claims based on inaccurate information will be recovered by HMRC.</p> <p>Furloughed employees should not contact HMRC as it is the employer who will make the payment to the employee.</p>   |
| <p><b>4. ELIGIBILITY FOR CJRS</b></p>  | <p>All employers with a UK bank account and UK PAYE are eligible for this scheme, fully funded public organisations are not expected to use this scheme.</p> <p>The extended CJRS is applicable to employers or employees who have not used CJRS previously; however, they must fulfil the qualifying requirements.</p> <p>Employees must be on at the PAYE payroll by 23:59 on 30th of October 2020 to qualify. Therefore, the real time information (RTI) submission to HMRC must have been made on or before the 30th of October 2020.</p>   |
| <p><b>5. SALARY</b><br/>What is the definition of "salary" on which 80% pay should be calculated on?</p> | <p>This is based on salary and any regular payments you are obliged to pay for such as past overtime, fees, and compulsory commission payments. Discretionary bonuses (including tips), commission payments and non-cash payments should be excluded. Employers continue to make Employers National Insurance contributions and minimum automatic enrolment employer pension contributions.</p> <p>There is a maximum monthly payment cap of £2,500 for employees</p> <p>The government have issued further guidance on how to make the calculation.</p> <p>There is also an HM Revenue &amp; Customs example of how to calculate a claim for a flexible furlough employee.</p> |
| <p><b>6. SICK LEAVE</b><br/>Can employees who are certified as sick be made furloughed workers?</p>      | <p>Employees on sick leave should be paid SSP, or sick pay where contractual, for the duration. They can subsequently be furloughed when their period of sickness ends if required as the scheme is not intended for short term sickness.</p> <p>Employees who are shielding or need to stay at home with someone who is shielding can be furloughed. They do not have to be placed on furlough if they can continue to work from home.</p>   |

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|   | <p>Please note an employer will not be able to recover SSP if you have furloughed an employee.</p> <p>It should be noted that furloughed employees retain their statutory rights and therefore if a furloughed employee becomes ill, they must be paid at least the SSP rate if they are considered as sick and not furloughed.</p>  |
| <p><b>7. OTHER LEAVE</b><br/>Can employees who are off on any other leave e.g. maternity leave or paternity leave etc be made furloughed workers?</p> | <p>For employees on maternity leave the normal rules apply. If you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme. The same principles apply where your employee qualifies for contractual adoption, paternity, or shared parental pay.</p> <p>If an employee returns from maternity or any other parental leave period; you can claim in respect of a period that commences on or after 1<sup>st</sup> November; the normal scheme rules apply.</p> <p>If an employee wants to end their maternity leave early to enable them to be furloughed with your agreement; they must give the employer a minimum of 8 weeks' notice of their return to work. Employers cannot furlough them up to the end of the 8 weeks.</p> |
| <p><b>8. How do I calculate statutory paid PARENTAL LEAVE entitlements for an employee who is a furlough worker?</b></p>                              | <p>Furloughed workers are entitled to pay based on their usual earnings rather than at the furloughed pay rate. This will include entitlement to statutory maternity pay and other forms of parental and adoption pay.</p>   |
| <p><b>9. WORKING WHILE FURLOUGHED</b><br/>Can we furlough workers on a rolling basis?</p>   | <p>You can furlough employees during the period the scheme is in operation in line with business operational needs subject to the minimum claim period of 7 calendar days.</p> <p>Employees may be placed on full furlough or flexible furlough.</p> <p>Flexible furlough enables employees to work part time and be furloughed for the remainder of their contracted hours of work.</p>   |
| <p><b>10. WORKING WHILE FURLOUGHED</b><br/>Can employees work for other employers whilst furloughed e.g. supermarkets, NHS?</p>                       | <p>If an employee has more than one employer (multiple jobs), provided it is permitted within your employment contract, they can continue to work for one employer and be furloughed by another.</p>   |

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|  | <p>If that employer subsequently decides to furlough the same rules apply and they can receive 80% of their salary from that employer. The 80% of salary or £2,500 cap applies to each contract of employment (job).</p> <p>Additionally, if your contracts of employment allow or you agree, an employee can work commence work for another employer whilst furloughed.</p> <p>A furloughed employee can take part in volunteer work if it does not provide services to or generate revenue for, or on behalf of your business or a linked organisation.</p> <p>Please note in both cases above; you should clearly outline to the employee this is a temporary arrangement and they must be able to fulfil the needs of their substantive contract in your employment at short notice.</p> |
| <p>11. <b>WORKING WHILE FURLOUGHED</b><br/>Can furloughed workers be rotated back into the business?</p>       | <p>As it is a separate claim for each period, furloughed workers can be brought back into work on a gradual basis as required by the business recovery within the time parameters of the scheme which has been confirmed will now end 31 March 2021. Other action may need to be considered beyond this date if the business is unable to bring an employee back to work.</p>  |
| <p>12. <b>WORKING WHILE FURLOUGHED</b><br/>Can furloughed workers undertake ad hoc work for the business?</p>  | <p>Where an employee is on full furlough; they cannot undertake any work for the business. However, if the employee is on flexible furlough; they may work some hours and be furloughed for the remainder of their contracted hours.</p> <p>The rules are slightly different for Directors who can undertake statutory obligations of the business under the Companies Act 2006 (provided they do no more than would reasonably be judged necessary for that particular purpose).</p>  |
| <p>13. <b>ANNUAL LEAVE</b><br/>Will employees continue to accrue annual leave while furloughed?</p>            | <p>Holiday leave continues to be accrued during the furloughed period.</p>   |
| <p>14. <b>ANNUAL LEAVE</b><br/>How will holiday entitlement and pay be treated during the furlough period?</p> | <p>Whilst an employee is furloughed, no other payments should be made. The employee is in effect temporarily 'laid off' as opposed to permanently 'laid off'.</p> <p>Employees can request and take holiday days and bank holidays in the usual way during a period of furlough leave. They must however seek agreement from their employer first. Furlough workers must get their usual pay in full for the holiday, bank holidays taken.</p>   |

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|   | Employer can require employees to take their holiday during a period of furlough by giving double the length of notice as the period of holiday. For example, 2 days' notice for 1-day holiday.  |
| 15. <b>ANNUAL LEAVE</b><br>Do we need to pay-up all accrued but unused holiday to the point of furlough?  | No. This is not necessary as holiday leave will continue to accrue whilst they are furloughed.   |
| 16. <b>ANNUAL LEAVE</b><br>Should I ask employees to take annual leave before furloughing?  | This is a matter for each business to consider. The purpose of furloughing is to prevent unemployment and to ease financial pressures on a business in order that it can survive a temporary downturn in business. Asking an employee to take leave will result in the company continuing to pay the employee which in the current climate may not be an attractive proposition. |
| 17. <b>ANNUAL LEAVE</b><br>Are we expected to deduct used but not accrued holidays to this point?   | No. The worker will remain an employee during the period of furlough and retain contractual benefits other than that around pay.   |
| 18. <b>PAYE</b><br>Will PAYE continue to be deducted in the normal way?   | HMRC will pay a grant to the employer must process the furloughed employees through their payroll as normal so PAYE and Employee National insurance contributions will be deducted. Employees will also continue to make automatic enrolment contributions on qualifying earnings unless they have elected to opt out or have ceased savings into a workplace pension plan.      |
| 19. <b>TRADE UNIONS</b><br>Can Trade Unions negotiate on behalf of all employees in a collective agreement situation?   | Yes, this is possible where such an agreement is in place.   |
| 20. <b>PENSIONS</b><br>a) Can we deduct pension, and other voluntary deductions from furloughed workers pay?<br><br>b) Do pension contributions continue or are they suspended? | Employees will continue to make automatic enrolment contributions on qualifying earnings unless they have elected to opt out or have ceased savings into a workplace pension plan.<br><br>Pension contributions will continue as outlined above.   |

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| <p><b>21. ELIGIBILITY</b><br/>Does the scheme apply equally to all employees?</p>                                  | <p>The scheme is open to all UK employers with a UK bank account and UK PAYE Scheme. You do not need to have claims for the employee prior to 30<sup>th</sup> October to claim for periods from 1<sup>st</sup> November.</p> <p>For periods from 1<sup>st</sup> November onwards; provided they were on the payroll on or before 23.59 30<sup>th</sup> October 2020 and notified on an RTI submission you can claim for any type of employee on any employment contract:</p> <ul style="list-style-type: none"> <li>• Full time</li> <li>• Part time</li> <li>• Apprentices*</li> <li>• Employees on agency contracts</li> <li>• Employees on fixed term contracts</li> <li>• Employees on flexible or zero hours contracts</li> </ul> <p>Foreign nationals are eligible to be furloughed, grants under the scheme are not considered as access to public funds therefore you can furlough employees on all categories of visa.</p> <p>*Apprentices can continue to train and must be paid at least the Apprenticeship Minimum Wage/National Living Wage/National Minimum Wage as appropriate for the time they spend training, meaning you must cover any shortfall.</p> |
| <p><b>22. ELIGIBILITY</b><br/>How should an employer agree furloughed status with an employee i.e. in writing?</p> | <p>Your affected employees will need to be designated ‘furloughed workers’ and this will need to be agreed with employees and confirmed in writing.</p> <p>Furlough agreements must be in place before the start of a claim period. The agreement can be amended during the claim period.</p> <p>A record of this communication must be retained for 5 years.</p> <p>It is important to note that changing employees’ employment rights is still subject to employment law and unless lay off or short time working clauses are included in contracts of employment, separate negotiation will be required. It is best to take employment advice on this point.</p>   |
| <p><b>23. Are TEMPLATE LETTERS available?</b></p>  | <p>Yes, we have made a template furlough letters available, located in the HR reference library under the Furlough section.</p> <p>Alternatively if you unable to access these please email your HR Business Partner or <a href="mailto:hello@questcover.com">hello@questcover.com</a> and a free template furlough letter will be sent to you.</p>   |

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| <p>24. Will I need to <b>TOP UP</b> the other 20%?</p>  | <p>You can fund the difference if you wish but there is no legal obligation to do this under the scheme.</p>  |
| <p>25. <b>WHAT OPTIONS</b> do we have to give our employees alongside the option to become a furloughed worker e.g. statutory redundancy?</p> | <p>The aim of Coronavirus Job Retention Scheme (CJRS) is for businesses to retain employees during the period in order that they can bring them back when the business situation improves (subject to the current scheme duration).</p>   |
| <p>26. Can workers be <b>REQUIRED TO TAKE</b> furlough leave?</p>   | <p>Employees must agree to be placed on furlough; they cannot be forced. However, furlough is an alternative to permanent options, such as redundancy.</p>  |
| <p>27. Can employers <b>CONTINUE TO CONTACT</b> furloughed employees?</p>   | <p>The employee cannot work for you during this period (even making phone calls or sending email); however, it is okay to periodically keep in touch from an employee welfare aspect.</p>   |
| <p>28. Can I <b>RE-HIRE</b> staff who I have recently made redundant and back date the claim?</p>   | <p>Any employees who were on the payroll on 23<sup>rd</sup> September 2020 and were made redundancy or stopped working for the employer after this date can be reemployed and claimed for. Please note the usual employment rights would apply and therefore employers should consider this option carefully.</p> <p>NOTE – employers are no longer able to retrospectively agree to put employees in furlough from 1<sup>st</sup> November; this opportunity ended on 13<sup>th</sup> November.</p>  |
| <p>29. Can we use the scheme for staff whose <b>START DATE</b> has been deferred or where offers have been withdrawn?</p>                     | <p>No. You can only furlough employees who were on the payroll and had been notified to HMRC via an RTI on or before 23.59 on 30<sup>th</sup> October 2020.</p>   |
| <p>30. How will pay be calculated in the case of employees with <b>VARYING REMUNERATION</b> e.g. those working on commission?</p>             | <p>You can claim for any regular payments you are obliged to pay; however, discretionary bonus (including tips), commission and non-cash payments are excluded.</p> <p>For furlough periods starting 1<sup>st</sup> November 2020; the reference period is the last pay period ending on or before 30<sup>th</sup> October 2020.</p> <p>If the employee has variable pay; the usual pay calculation is determined by when they were on your payroll.</p> <p>The rules for the furlough payment differ from the previous system; therefore, it is advised you refer to the calculator available on the Gov UK website.</p> |



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| <p>31. Can furloughed workers receive <b>TRAINING</b>?</p>   | <p>A furloughed employee can take part in training as long as it does not provide services or revenue to the business. If workers are required to complete training in connection with the business, they must be paid the National Living Wage or National Minimum Wage for the time spent training, meaning you may have to top up at the companies expense.</p>  |
| <p>32. Will <b>REDUNDANCIES</b> be considered unfair in circumstances where employers could have applied for the scheme?</p> | <p>Companies should explore all options and adopt the best option for their company. The CJRS is to avoid mass redundancies and unemployment; however, in some cases there may be no alternative.</p>   |
| <p>33. Is consultation in a redundancy situation compulsory; especially where employer is facing financial uncertainty?</p>  | <p>Companies must ensure they always follow due process; failure to do so will result in unfair dismissal claims. Employment Tribunals may be sympathetic to the current situation but will not look favourably where companies have deliberately failed to follow a fair and reasonable process.</p>   |
| <p>34. <b>NOTICE PERIOD</b></p>  | <p>Claims cannot be made for any day in which an employee is servicing notice between 1<sup>st</sup> December 2020 and 31<sup>st</sup> January 2021. This applies to both statutory and contractual notice.</p> <p>This includes employees who are serving notice of resignation or retirement.</p> <p>The CJRS will be reviewed in January 2021 where further details will be provided.</p>  |
| <p>35. Will the scheme be <b>EXTENDED</b> beyond 31<sup>st</sup> March 2021?</p>   | <p>The government has not commented on this; however, they have confirmed the furlough payment arrangements will be reviewed in January 2021.</p>   |
| <p>36. Can <b>DIRECTORS</b> furlough themselves?</p>   | <p>Directors are eligible to be furloughed provided they meet the necessary criteria.</p> <p>What is different is that company directors have duties to their company as set out in the Companies Act 2006 therefore the decision should be made by the board and formally adopted within the company records.</p> <p>Directors will be able to carry out their particular duties to satisfy the statutory obligations of the company without falling foul of the furlough rules, provided they do no more than would reasonably be judged necessary for that purpose; however they cannot carry out work that would generate revenue or provide services to benefit the company.</p> |

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| <p>37. <b>CAN STAFF REFUSE</b> to be furloughed?</p>   | <p>Yes, staff must agree to be furloughed and cannot be forced. If an employee refuses; the company should consider alternative options for example, redundancy.</p>  |
| <p>38. I understand that the employment contract must allow <b>VARIATION IN TERMS</b> at company discretion otherwise a consultation period of a month is needed. If this is done, I assume the company can still back date the application of the furlough?</p> | <p>Typically, where there is no contractual clause to vary the contract or lay off employees; employers must enter a period of consultation and seek employee agreement prior to applying the changes to the contract. However, this is an exceptional situation and many companies do not have time to conduct a consultation period.</p> <p>The government have offered the CJRS and therefore companies should discuss the options with their staff openly and frankly and seek agreements from staff. The aim is to avoid a redundancy situation.</p> |
| <p>39. Does the company have to prepare a <b>CONTINUITY PLAN</b> to apply for furlough</p>   | <p>No continuity plan is required to apply for a CJRS grant, however when selecting employees, employers should be aware that equality and discrimination laws will apply in the usual way.</p>   |
| <p>40. Can <b>HOLIDAY LEAVE</b> be carried over?</p>   | <p>Working Time Regulations has been amended. Workers who have not taken all their statutory annual leave entitlement due to COVID-19 will now be able to carry up to 4 weeks over into the next 2 leave years.</p>   |
| <p>41. If making staff redundant after furlough has ended, do <b>NORMAL REDUNDANCY RULES</b> apply?</p>  | <p>Yes, the usual redundancy procedure will apply, and payments should be made according to the redundancy policy if the organisation have one or statutory redundancy guidelines.</p>  |
| <p>42. How quickly can HMRC <b>PROCESS PAYMENTS?</b></p>   | <p>Payments will be made six days after receipt of a claim through their portal provided it passes HMRC checks. HMRC will check claims and provided eligible will make payment via BACS to the nominated bank account.</p>  |
| <p>43. How much of this process will be <b>AUTOMATED</b> in terms of BACS payments to our business account?</p>  | <p>Once HMRC have received your claim and you are eligible for the grant, payments will be made via BACS payment to a UK bank account.</p> <p>Claims will need to be made in accordance with actual payroll amounts at the point at which you ran your payroll or in advance of an imminent payroll.</p>  |
| <p>44. Can furloughed employees continue to have <b>SALARY SACRIFICE</b> deductions taken from their pay?</p>  | <p>Agreement will need to be sought before suspending salary sacrifice arrangements as these arrangements have been contractually agreed and would, in general, must be terminated and dealt with subject to that agreement.</p>  |

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|   | We would advise completing a cost – benefit analysis before carrying out this measure as dependant on policies employers and employees may be required to pay more tax and National insurance contributions  |
| 45. Can <b>VOLUNTARY DEDUCTIONS</b> e.g. private medical insurance continue to be deducted from employees on furlough?  | Yes, providing the scheme is still in operation and the employee has no objection to continuing with their scheme.   |
| 46. Can an employee <b>PAY FREQUENCY</b> change during furloughed status?   | This is subject to agreement from the employee to change their payment frequency.  |
| 47. Can I be sued for <b>BREACH OF CONTRACT</b> by someone I have offered a contract to but who had not started work by 30 <sup>th</sup> October and who I therefore cannot furlough? | <p>Not sued. If continuous service is less than 1 month, no notice pay either side is due by statutory law however termination payment may be due dependant on the contractual terms. The employer can either withdraw offer of employment or delay start date. The employee may have the option to go back to their previous employer and be furloughed.</p> <p>Employers are not permitted to place an employee on periods of unpaid leave or holiday without the consent of the employee.</p> |
| 48. Can firms insist that employees undertake <b>PERSONAL DEVELOPMENT</b> while on furlough?  | <p>Training is permitted providing the employee does not provide services to or generate revenue for the employer whilst undertaking it.</p> <p>If employees are required by you to undertake training (such as online training) while on furlough, they must be paid at least the National Living Wage/National Minimum Wage, even if that is more than the level of their 80% subsidised pay under the scheme.</p>   |

Updated 16/11/20