CORONAVIRUS – JOB RETENTION SCHEME FAQS

The Government has announced that all UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis.

BCC has sought clarification from Ministers on the detail of the scheme and will update these FAQs as further information is obtained.

***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 ChamberHR or email hello@questcover.com
Phone: 01455 852028

The official guidance states businesses will need to:

- designate affected employees as 'furloughed workers,' and notify your employees 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 a new online portal (HMRC will set out further details on the information required)

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month and has set up a new system for this purpose. The scheme will cover the cost of wages backdated to March 1st and will remain open until the end of October.

From the start of August, furloughed workers will be able to return to work part-time with employers being asked to pay a percentage towards the salaries of their furloughed staff. The employer payments will substitute the contribution the government is currently making, ensuring that staff continue to receive 80% of their salary, up to £2,500 a month. Full guidance will be published by the end of May.

If your business needs short term cash flow support, you may be eligible for a Coronavirus Business Interruption Loan.

Question	Answer
1. **EVIDENCE** How do employers evidence to HMRC that an individual is a furloughed worker?	A schedule of furloughed workers will need to be produced and submitted to HMRC through a new portal created for the purpose. The following information will need to be included: • Business PAYE reference number • The number of employees being furloughed • The claim period you are claiming for, start and end date (minimum period is 3 weeks) • Full name of employee

	• Employee NI number • Your Corporation Tax Unique Taxpayer reference or Company registration number (or your Self Assessment Unique Taxpayer reference) • Payroll number for the employee (optional) • Amount claimed. Remember to keep your salary calculation as HMRC will retain the right to audit • Your company bank account number • Your contact name • Your phone number If your company has fewer than 100 furloughed staff you will need to enter details of each employee directly into the system via the portal. If you have more than 100 employees furloughed you will need to upload a file rather than directly input. HMRC will accept .xls .xlsx .csv .ods files. After submission, you should keep a note of the reference number issued as there will be no other confirmation issued by HMRC
2. **REIMBURSEMENT** In what time frame will firms be reimbursed for furloughed workers?	HMRC has built a new portal for this and in effect will be reversing the normal flow of monies from collection, to payment. This will be via a grant from HMRC (not a loan). The portal went live on 20 April. You can only submit one claim for a minimum 3-week period which is also the minimum term an employee can be furloughed for; however if you know how long your employees will be furloughed you can claim for the whole period in one application. HMRC will check the claim and provided you are eligible will pay into the nominated bank account by BACS. 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. You must retain all of your claim records for 5 years as HMRC retain the right to audit. Any claims based on inacurrate information can be recovered by HMRC. Furloughed employees should not contact HMRC as it is the employer who will make the payment to the employee.
3. **DURATION** Is there a duration attached the furloughed status?	• The scheme was originally to continue for 3 months but on 12 May it was extended to the end of October. The government has indicated that they will continue to review it. • You will be able to recall employees before the end of October should your business require them provided they have been furloughed for the minimum period. • Until end July, the minimum term for an employee to be furloughed is 3 weeks. From 1 August, furloughed workers will be able to return to work part-time with employers being asked to pay a

	percentage towards the salaries of their furloughed staff. • The scheme is backdated to 1 March 2020 but only for employees who may already have been affected prior to the announcement of the scheme on 20 March.
4. **SALARY** What is the definition of "salary" on which 80% pay should be calculated on?	This has now been confirmed to be on base 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 can claim Employers National Insurance contributions and minimum automatic enrolment employer pension contributions. There is a maximum payment cap of £2,500 for employees, however the employer is able to add the aforementioned Employers National Insurance and minimum automatic employer pension contributions to the calculation. The government have issued further guidance on how to make the calculation click here
5. **SICK LEAVE** Can employees who are certified as sick be made furloughed workers?	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. However employers are entitled to furlough employees who are being shielded or are on long term sick leave. Please be aware that an employer will not be able to recover SSP if you have furloughed an employee. 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.
6. **SICK LEAVE** Is it available for employees already receiving statutory or contracted sick pay?	As above
7. **OTHER LEAVE** Can employees who are off on any other leave e.g. maternity leave or paternity leave etc be made furloughed workers?	No. 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.

8. How do I calculate statutory paid **PARENTAL LEAVE** entitlements for an employee who is a furlough worker?	Government announced on 24th April 2020, furloughed workers will be 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.
9. Will other periods of authorised absence be suspended during this time e.g. maternity leave?	Furlough is a temporary layoff and in this case the government has undertaken to pay up to 80% of salary as a mechanism to prevent mass unemployment where an employee may be expected to resume work again in the future. It will not replace other schemes such as Maternity leave which will remain in place. Most of the SMP can already be recovered by employers.
10. **WORKING WHILE FURLOUGHED** Can we furlough workers on a rolling basis?	You can furlough additional workers during the period the scheme is in operation in line with business requirements subject to the minimum claim periods (three weeks).
11. **WORKING WHILE FURLOUGHED** Can employees work for other employers whilst furloughed e.g. supermarkets, NHS?	Furloughed employees cannot work for you during this period, training is permitted providing the employee does not provide services to or generate revenue for the employer whilst undertaking it. They still remain your employees. From August the furlough process will change; further details will be published before the end of May. However, 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. 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 job. Additionally, if your contracts of employment allows, an employee can work for another employer whilst furloughed. 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.
12. **WORKING WHILE FURLOUGHED** Can employees intermittently be furloughed, punctuated by periods of paid holiday or working?	Each claim covers specific employees therefore you may be able to bring them back into work for the following period to undertake paid work. It should be noted that employees will continue to accrue annual leave whilst furloughed so you wouldn't change an employee's status from furlough due to holiday.

13. **WORKING WHILE FURLOUGHED** Can furloughed workers be rotated back into the business?	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 (end October 2020). Unless the government elect to extend the scheme, other action may need to be considered beyond the initial term.
14. **WORKING WHILE FURLOUGHED** Can furloughed workers undertake ad hoc work for the business?	Furloughed workers are not allowed, to undertake any work for the business. Furlough rules will change from August; further details to be published soon. 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). The BCC has asked the government for more flexibility in the scheme.
15. **ANNUAL LEAVE** Will employees continue to accrue annual leave while furloughed?	Holiday leave will continue to be accrued during the furloughed period.
16. **ANNUAL LEAVE** How will holiday entitlement and pay be treated during the furlough period?	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. 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 usually pay in full for the holiday, bank holidays taken.
17. **ANNUAL LEAVE** 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.
18. **ANNUAL LEAVE** 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.
19. **ANNUAL LEAVE** 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.

20. **PAYE** Will PAYE continue to be deducted in the normal way?	HMRC will pay a grant to the employer who will 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.
21. **TRADE UNIONS** 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.
22. **PENSIONS** a) Can we deduct pension, and other voluntary deductions from furloughed workers pay? 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. Pension contributions will continue as outlined above.
23. **ELIGIBILITY** a) Does the scheme apply equally to all workers? b) Is it applicable to temporary staff and if so, what is the eligibility?	The scheme is open to all UK employers that had created and started a PAYE payroll scheme on or before 19 March 2020 (previously as at 28 February 2020). Therefore, it does not cover: • Workers on the PAYE payroll on or before 19 March 2020 if they have not been notified to HMRC on an RTI submission on, or prior to 19 March 2020 • Workers not on the payroll as at 20 March 2020 (previously 28 February 2020). • Self-employed individuals whether working as a sole trader or through a partnership or LLP. There has been a separate scheme announced for self-employed. • Workers who are working on personal contracts but do not satisfy the conditions to be an employee (those with no holiday or sick pay entitlement)

	Any UK organisation with employees can apply, including: • businesses • charities • recruitment agencies (agency workers paid through PAYE) • public authorities • Individuals (provided they pay their employees through PAYE and send HMRC an RTI submission notifying a payment in respect of the employee on or before 19 March 2020) Provided they were on the payroll on or before 19 March 2020 (previously 28 February) you can claim for any type of employee including (and they had been notified on an RTI submission on or prior to 19 March 2020): • Full time • Part time • Apprentices* • Employees on agency contracts • Employees on fixed term contracts • Employees on flexible or zero hours contracts An exception to the above rule is that a new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 19 March 2020 if either the TUPE or PAYE business succession rules apply to the change of ownership. *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. The business must have a UK bank account
24. **ELIGIBILITY** How should an employer agree furloughed status with an employee i.e. in writing?	Your affected employees will need to be designated 'furloughed workers' and this will need to be agreed with employees and confirmed in writing. A record of this communication should be retained for 5 years. 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 may be required. It is best to take employment advice on this point.
25. Is a **TEMPLATE LETTER** available?	Yes, we have made a template furlough letter available, located in the ChamberHR reference library under the Redundancy section.

	Alternatively if you don't have access to ChamberHR please send an email to hello@questcover.com and a free template letter will be sent to you.
26. Will I need to **TOP UP** the other 20%?	You can fund the difference if you wish but there is no obligation to do this under the scheme.
27. Are there any **CONDITIONS** for the employer attached to applying furloughed status e.g. should we guarantee continued employment for a period?	• The employee cannot work for you if furloughed. • The scheme will continue until end October (extended on 12 May 2020). • Until the end of July, the minimum term an employee can be furloughed is for 3 weeks. • The government has indicated that there is no requirement on the employer that employment needs to be guaranteed afterwards. At this point it may be necessary to consider termination of employment if the business is unable to bring them back after the scheme finishes. It is important that you seek further advice on this prior to taking any action as employment law still applies and if carried out incorrectly you may find yourself subject to an Employment Tribunal claim.
28. **WHAT OPTIONS** do we have to give our employees alongside the option to become a furloughed worker e.g. statutory redundancy?	The idea behind the 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).
29. Can workers be **REQUIRED TO TAKE** furlough leave?	Furlough is an alternative to permanent lay off/redundancy. Provided your contracts of employment include the appropriate clauses to enable you to change their status you can impose this.
30. Can employers **CONTINUE TO CONTACT** furloughed employees?	The employee cannot work for you during this period (even making phone calls or sending email); however, we would imagine that it would okay to periodically keep in touch from an employee welfare aspect.
31. Can I **RE-HIRE** staff who I have recently made redundant?	The scheme is to be backdated to 1 March 2020 so therefore you could theoretically withdraw the redundancy notice if it took place within this period. You would need to seek employment advice as to how to achieve this through the ChamberHR advice lines. Anyone made redundant prior to this date is not eligible for this scheme.
32. Can we use the scheme for staff whose **START DATE** has been deferred	No. You can only furlough employees who were on the payroll as at 19 March 2020 (previously 28 February 2020) and had previously been notified to HMRC via an RTI on or before 19 March 2020.

or where offers have been withdrawn?	
33. How will pay be calculated in the case of employees with **VARYING REMUNERATION** e.g. those working on commission?	You can claim for any regular payments you are obliged to pay; however, discretionary bonus (including tips), commission and non-cash payments are excluded. For employees whose earnings fluctuate for other reasons you can claim the following: • If an employee has been engaged for a full 12 months you can claim 80% of the higher of the same month's earnings from the previous year, or, the average earnings for the 2019/20 tax year • If an employee has been employed for less than a year you can claim 80% of an average of their monthly earnings since they started their employment • If an employee only started in February 2020 a pro rata amount can be claimed The government have issued further guidance on making the calculation click here
34. Can furloughed workers receive **TRAINING**?	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 businesses expense for lower paid employees.
35. Will **REDUNDANCIES** be considered unfair in circumstances where employers could have applied for the scheme?	Companies should explore all options and adopt the best option for their company. The job retention scheme is to avoid mass redundancies and unemployment; however, in some cases there may be no alternative.
36. Will any '**SPECIAL CIRCUMSTANCES'** defence be compromised by the scheme where the employer feels financially compelled to ignore the obligation to consult on collective redundancies prior to any dismissals or seeks to shorten the mandatory collective consultation period?	Companies must ensure they always follow due process; failure to do so may 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.
37. Will the scheme be **EXTENDED** beyond 3 months?	On the 12 May the government announced that the scheme would be extended by a futher 4 months from the initial period to October 2020. The same rules apply until the end of July; however the rules will change from

	August. They have indicated that they will continue to keep under review, depending on how long the crisis continues but the decision lies with the government as to whether they extend further.
38. What does the scheme offer to **CHARITIES**?	The scheme is available to employees remunerated through the PAYE. Charity workers remunerated this way will qualify
39. Can employers furlough **TIER 2 MIGRANTS** under the scheme? If so, what are the notification requirements for employers? Are furloughed employees still required to meet minimum salary thresholds?	The Home Office has confirmed that migrants can be furloughed. See official guidance here:
40. Can **DIRECTORS** furlough themselves?	Directors are eligible to be furloughed provided they are on the payroll. 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. Directors will still 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. Another consideration for directors is that they will often take a lower or even no salary from the business. Instead they will often utilise dividends to top up their income, as and when they have the profits to do so. As dividends are not subject to PAYE, the dividend amounts will not form part of the calculation for the director. Directors in this position are likely to find that should they qualify for a CJRS grant, the amount paid would likely be 80% of a low salary. A further concern is that a director must be non-active to be furloughed other than to meet statutory obligations so consideration must be given to that otherwise they may fail the CJRS requirements. The CJRS is also available to salaried individuals who are directors of their own personal service company (PSC).
41. **CAN STAFF REFUSE** to be furloughed?	Yes, staff must agree to be furloughed and cannot be forced. If an employee refuses; the company should consider alternative options for example, redundancy.

42. I understand that the employment contract has to allow **VARIATION IN TERMS** 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?	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. 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.
43. Does the company have to prepare a **CONTINUITY PLAN** to apply for furlough	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.
44. Can **HOLIDAY LEAVE** be carried over?	Working Time Regulations will be amended. Workers who have not taken all of 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.
45. For **STUDENTS** that are PAYE tax exempt but paying NICs - are they still eligible?	Furloughed employees must have been on your PAYE payroll on 19 March 2020 (previously 28 February 2020). If the employees are earning below the tax threshold (£12,500 a year) they would still be eligible to claim. Further information should be available when HMRC publish the full guidelines.
46. If making staff redundant after furlough has ended, do **NORMAL REDUNDANCY RULES** apply (e.g. one week for each year of continual service above minimum close of contract notice to a maximum of 12 weeks).	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.
47. How quickly can HMRC **PROCESS PAYMENTS**?	HMRC have indicated that payments will be made six days after receipt of a claim through their portal provided it passes their checks. The HMRC portal opened on 20 April 2020. HMRC will check claims and provided eligible will make payment via BACS to the nominated bank account.
48. How much of this process will be **AUTOMATED** in terms of BACS payments to our business account?	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.

	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. For businesses with fewer than 100 employees furloughed you will need to input employee details individually via the portal. Those with more than 100 furloughed staff will need to upload the information in a file
49. How should **PENSION DEDUCTIONS** be calculated for employees on Furlough? Should the 80% furloughed payment be the new reference salary, or should deductions continue as normal?	The maximum grant will be calculated per employee and is the lower of: • 80% of 'an employee's regular wage' and. • £2,500 per month. Plus the employers' national insurance contributions (NIC) on this amount and the minimum automatic enrolment employer pension contributions on that wage. Commission, fees and bonuses should not be included. The government have issued further guidance on making the calculation click here
50. Can furloughed employees continue to have **SALARY SACRIFICE** deductions taken from their pay?	Agreement will need to be sought before suspending salary sacrifice arrangements as these arrangements have been contractually agreed and would, in general, have to be terminated and dealt with subject to that agreement. 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
51. Can **VOLUNTARY DEDUCTIONS** 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.
52. For employees with **VARIABLE PAY**, where Feb 2019, or average of last 12 months is used as reference, is taxable pay the reference pay referred to?	Yes, the average pay over the last 12 months will need to be calculated as gross and then the 80% of this amount will be used as part of the Furlough pay calculations.
53. Will employers use the FPS via RTI to **NOTIFY HMRC** that a worker is furloughed, will an effective date be required?	Yes, this will be used. You will be required to make the claim via the online portal once it is set up and the information from your RTI will be used. An effective date will be required when making your claim via the portal.

54. What **OTHER EVIDENCE** will HMRC require to prove that a worker has been furloughed?	To claim, you will need: • your ePAYE reference number • the number of employees being furloughed • the claim period (start and end date) • amount claimed (per the minimum length of furloughing of 3 weeks) • your bank account number and sort code • your contact name • your phone number You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim. You will also need to retain a copy of the furlough letter to each employee and your calculations for each claim for 5 years.
55. Can an employee **PAY FREQUENCY** change during furloughed status?	This is subject to agreement from the employee to change their payment frequency.
56. How should employees who were due a **PAY RISE** during the furloughed period e.g. NMW increases, be treated - should the new rate of pay apply.	The government have stipulated that pay will be based on the earnings prior to 28 February 2020. The government guidance states individuals are only entitled to the national living wage, NMW or apprentices minimum wage for the hours they are working or are treated as working under minimum wage rules. This means a furlough worker who is not working can be paid at the lower of 80% of their wages or £2500; this would be below their appropriate minimum wage. NWM does apply where the apprentice is conducting training; employers will need to make the additional payment.
57. Can all **TEMPORARY STAFF** be furloughed ie. are those with an employment contract treated differently to those with a service contract?	Temporary employees can still be furloughed providing they were on the company's PAYE payroll on 19 March 2020 (previously 28 February 2020).
58. Can I be sued for **BREACH OF CONTRACT** by someone I have offered a contract to but who had not started work by 28 February and who I therefore cannot furlough?	Not sued. If there is under 1 months service, 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 can go back to their previous employer to be furloughed. Employers are not allowed to place an employee on periods of unpaid leave or holiday without the consent of the employee.

	If such action is required to maintain the solvency of a business, it should be done with the agreement of the employees (or their representatives).
59. Can firms insist that employees undertake **PERSONAL DEVELOPMENT** while on furlough?	Training is permitted providing the employee does not provide services to or generate revenue for the employer whilst undertaking it. 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.

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