

# Job Support Scheme: expansion of the scheme and further details released

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## Employment Law News

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### Job Support Scheme: expansion of the scheme and further details released

Last month we reported on the new wage subsidy scheme designed to replace the Coronavirus Job Retention Scheme (i.e. furlough). With a second lockdown coming into force on 5

November 2020, the Job Support Scheme has been delayed until early December 2020. Here, we outline how the Job Support Scheme will work.

### 1. What is the Job Support Scheme (JSS) and when is it coming into force?

The JSS is the successor to the Coronavirus Job Retention Scheme (**CJRS**) or “furlough” scheme and will come into operation after the CJRS closes. Initially, the JSS was to run between 1 November 2020 and 30 April 2021. However, the second national lockdown (between 5 November 2020 and 2 December 2020) means it has been delayed. Instead, the CJRS will run for the duration of the lockdown and the JSS will come into force thereafter.

The newly published JSS Policy Paper provides that the JSS is intended to “...support individuals and businesses to deal with the challenges created by coronavirus this winter” and “help employers retain their employees”.

There will be two forms of support available under the revised JSS:

- **JSS Open:** this is available for businesses that are operating but facing decreased demand. The intention is that JSS Open will allow such employers to reduce their employees’ working hours and claim wage support, rather than make redundancies.
- **JSS Closed:** this is available for businesses that are legally required to close their premises as a direct result of coronavirus restrictions set by one or more of the four governments of the UK.

### 2. What wage support is available under JSS Open?

Under JSS Open employees must work at least one fifth of their normal working hours but may work more than this if needed. Note that under the original proposals, support would only

have been made available for employees working at least one third of their normal working hours, and so the revised scheme is more generous.

The employer is responsible for paying the employee for all the hours actually worked (and such pay must comply with national minimum wage legislation). However, the burden of the **unworked** hours will be split three ways:

- The Government will pay 61.67% of the “reference salary” up to a maximum of £1,541.75 per month (note that under the original proposals the Government would have paid only 33% up to a maximum of £697.92 per month).
- The employer will pay 5% of the “reference salary” up to a maximum of £125 per month, but they may pay more if they wish to do so (note that under the original proposals the employer would have had to pay 33%).
- The employee will suffer a wage reduction for the remaining third of the unworked hours.

For these purposes, “reference salary” includes: regular wages; non-discretionary payments for hours worked, including overtime; non-discretionary fees; non-discretionary commission payments; and piece rate payments. It does not include: discretionary payments, bonuses or commission; non-cash payments; and non-monetary benefits (e.g. benefits in kind or salary sacrifice).

The employer is also responsible for paying employer’s National Insurance Contributions (**NICs**) and employer’s pension contributions on the full amount paid to the employee (including the amount paid by the Government).

In practice, employees earning up to £37,500 per annum will only suffer the wage reduction caused by the lost third of pay for the unworked hours (**see Worked Example 1**). However, higher earners will suffer a wage reduction by virtue of the application of the cap on the employer’s and Government’s

contributions and the lost third of pay for the unworked hours (see **Worked Example 2**). The higher the salary, the greater the wage reduction.

**Worked example 1: a full-time employee who normally works 35 hours per week and is paid an annual salary of £37,500 / monthly salary of £3,125:**

During the life of JSS Open an employee works one fifth of his/her normal working hours. The employee's monthly salary will be paid as follows:

- employer pays £625 for the worked hours and, by virtue of the employer's cap, £125 in respect of the unworked hours;
- Government pays £1,541.75 in respect of the unworked hours; and
- employee suffers a wage reduction of £833.25.

The employee receives a total of £2,291.75 per month (or c.73% of their normal pay)

The employer pays a total of £750 per month (or c.24% of normal pay), plus employer's NICs and employer's pension contributions on £2,291.75 per month, in exchange for the employee working 20% of his/her hours.

**Worked example 2: a full-time employee who normally works 35 hours per week and is paid an annual salary of £120,000 / monthly salary of £10,000:**

During the life of JSS Open an employee works one fifth of his/her normal working hours. The employee's monthly salary will be paid as follows:

- employer pays £2,000 for the worked hours **and**, by virtue of the employer's cap, £125 in respect of the unworked hours;
- Government pays £1,541.75 in respect of the unworked hours; and
- employee suffers a wage reduction of £6,333.25.

The employee receives a total of £3,666.75 per month (or c.37% of his normal pay).

The employer pays a total of £2,125 per month (or c.21.25% of normal pay), plus employer's NICs and employer's pension contributions on £3,666.75 per month, in exchange for the employee working 20% of his/her normal hours.

### **3. What wage support is available under JSS Closed?**

Where an employer is legally required to close their premises as a direct result of the coronavirus restrictions, they will be able to apply under JSS Closed for wage support for employees who are unable to work. Under JSS Closed, each eligible employee will be paid as follows:

- The Government will pay 66.67% of the "reference salary" up to a maximum of £2,083.33 per month.
- The employer is not required to pay anything to the employee but may pay something if it wishes to do so.
- Assuming the employer pays nothing, the employee will suffer a wage reduction of 33.33% or more if the employee is higher paid.

Guidance on the meaning of "reference salary" for these

purposes will be published shortly.

The employer will be responsible for paying employer's NICs and employer's pension contributions on the full amount paid to the employee (including the amount paid for by the Government).

In practice, employees earning up to £37,500 per annum will only suffer the wage reduction caused by the lost third of pay (see **Worked Example 3**). However, higher earners will suffer a wage reduction by virtue of the application of the cap on the Government's contribution **and** the lost third of pay (See **Worked Example 4**). The higher the salary, the greater the wage reduction.

**Worked example 3: a full-time employee who normally works 35 hours per week and is paid an annual salary of £37,500 / monthly salary of £3,125:**

During the life of JSS Closed the employee's monthly salary will be paid as follows:

- employer pays nothing;
- Government pays £2,083.33; and
- employee suffers a wage reduction of £1,041.67.

The employee receives a total of £2,083.33 per month (or c.66.67% of her/his normal pay).

The employer pays employer NICs and employer pension contributions on £2,083.33 per month.

**Worked example 4: a full-time employee who normally works 35 hours per week and is paid an annual salary of £120,000 / monthly salary of £10,000:**

During the life of JSS Closed the employee's monthly salary will be paid as follows:

- employer pays nothing;
- Government pays £2,083.33; and
- employee suffers a wage reduction of £7,916.67.

The employee receives a total of £2,083.33 per month (or c.20.83% of her/his normal pay).

The employer pays employer NICs and employer pension contributions on £2,083.33 per month.

#### **4. Which employers are eligible to apply for support under the JSS?**

##### **General eligibility criteria – all employers**

All employers with a UK bank account and a UK PAYE scheme are potentially able to claim a JSS grant, regardless of whether or not they have claimed under the CJRS before. However, organisations that have staff costs that are fully publicly funded should not use the JSS.

Employers will be able to claim grants under both JSS Open and JSS Closed at the same time for different employees (e.g. a pub chain may have employees working reduced hours in pubs in areas subject to tier one and tier two restrictions and have employees not working at all where pubs have had to close in areas subject to tier three restrictions).

Employers claiming a JSS grant will still be eligible to claim the Job Retention Bonus if they are eligible. You can read more about the Job Retention Bonus in our briefing [here](#).

##### **Additional eligibility criteria – employers claiming under JSS Open**

Employers wishing to make a claim under JSS Open must meet the following additional eligibility criteria:

- **Financial Impact:** employers with 250 or more employees on 23 September 2020 must undertake a “Financial Impact Test” demonstrating that their turnover has remained equal or fallen, to show that they have been adversely affected due to coronavirus. (Employers with fewer than 250 employees on 23 September don’t have to do this). Further details of the Financial Impact Test are set out in the JSS Policy Paper. The Government says that it expects (but will not require) employers with 250 or

more employees not to make capital distributions while claiming JSS Open (or JSS Closed).

- **Affected employees:** the employer may only claim in respect of employees who are working reduced hours (and at least 20% of their normal working hours). Training will be treated as working time provided it is paid for by the employer at the normal rate of pay.
- **Consultation and agreement with employees:** the employer must have consulted with affected employees and reached a written agreement with them (or, where relevant, a written collective agreement with a trade union) on the terms of the temporary working arrangement before making a claim. This agreement must be kept for five years and be available for inspection by HMRC upon request.

Further guidance on what to include in the written agreement is expected shortly.

Importantly, the JSS Policy Paper highlights that when employers are making decisions, such as to whom they should offer reduced hours, employment and discrimination laws will apply in the usual way and must be complied with.

### **Additional eligibility criteria – employers claiming under JSS Closed**

Employers wishing to make a claim under JSS Closed must meet the following additional eligibility criteria:

- **Closure of business premises:** the employer's business premises must have been legally required to close as a direct result of coronavirus restrictions. This includes premises restricted to delivery or collection only services and those restricted to provision of food and/or drink outdoors. However, business premises required to close by local public health authorities as a result of specific workplace outbreaks are not eligible for JSS Closed.
- **Claims may only be made while closure restrictions are**



**in place:** claims under JSS Closed may only be made while the relevant restrictions are in place and will not cover any period when the premises are legally allowed to reopen (although the employer may then be able to claim under JSS Open if eligible).

- **Affected employees:** the employer may only claim in respect of employees whose primary place of work has been legally required to close and such employees must cease work for at least seven consecutive calendar days.
- **Consultation and agreement with employees:** the employer must have consulted with affected employees and reached a written agreement with them (or, where relevant, a written collective agreement with a trade union) on the terms of the temporary working arrangement before making a claim. This agreement must be kept for five years and be available for inspection by HMRC upon request. Further guidance on what to include in the written agreement is expected shortly.

Further eligibility criteria for JSS Closed will be published shortly.

## 5. Which employees are covered?

In order to make a claim for wage support under either JSS Open or JSS Closed the employee in question must meet these eligibility criteria:

- **Employees only:** to be an employee for the purposes of the JSS, the individual must be treated as an employee for income tax purposes (regardless of what type of contract they have).
- **On payroll:** the employee must have been on the employer's payroll between 6 April 2019 and 11.59pm on 23 September 2020 (i.e. a Real Time Information submission notifying payment to that employee to HMRC must have been made at some point in that period). Employees who were in employment on 23 September 2020,

but were terminated after that date, may be rehired and claimed for under the JSS.

- **Not redundant or under notice:** the employee must not have been made redundant or be serving a period of statutory or contractual notice during a claim period.

## **6. How are JSS claims made?**

The JSS will open after the end of the lockdown and the closure of the CJRS. Currently, this means the JSS should start on 3 December 2020. However, this is not certain as the lockdown period may be extended beyond 2 December 2020 if the “R rate” is not reduced below 1. It is not clear how long the JSS will run for. The original plan was that it would close on 30 April 2020. However, as the situation is fast-moving, we should expect this date to be reviewed in due course.

Grants will be paid in arrears, meaning that a claim may only be submitted once payment of the full amount claimed has actually been made to the employee and has been reported to HMRC. This is in contrast to the procedure under the CJRS, where grants could be claimed in advance of paying staff. Employers are not permitted to charge the employee an administration charge or fee which would have the effect of reducing wages below the amount claimed under the JSS.

## **7. How will HMRC manage fraudulent claims?**

HMRC will check claims and payments may be withheld where it suspects a claim is ineligible. Where a claim is found to be fraudulent, the full amount of the grant must be repaid and penalties of up to 100% of the grant may be applied.

In an effort to encourage the reporting of fraud by the public, HMRC intends to publish the names of all employers who use the JSS. It is also considering publicly “naming and shaming” employers who are charged penalties for making a fraudulent JSS claim.

## **8. Where can employers find out more?**

Employers can find out more about the JSS, including how to run calculations for JSS Open, in the [Job Support Scheme – Policy Paper](#).

Detailed guidance on JSS Open and JSS Closed has been published, however, this is likely to be revised given the delay to the introduction of the scheme. We will update you on the position as soon as this is clear.

**BDBF is currently advising many employers and employees on the challenges presented by the coronavirus. If you or your business needs advice on the Job Support Scheme or other coronavirus-related matter please contact Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**

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