

## UK job support scheme (JSS): Open - what it means for employers

26 OCTOBER 2020

CATEGORY:  
[ARTICLE](#)



**UPDATE 9 November 2020: The JSS has been put on hold because the Coronavirus Job Retention Scheme ( CJRS) has been extended until 31 March 2021 (announced 5 November 2020). This page – which is now out of date – will be updated if and when the JSS is implemented by the Government.**

The Government announced that it was increasing the level of financial support available under the original Job Support Scheme on 22 October. This scheme, which takes effect from 1 November 2020, is now called '**JSS Open**' ('open' being a reference to businesses not being legally required to close their premises).

The level of financial support available under the expansion to the scheme (for employers legally required to close their premises) – [see here](#) – was not affected by the 22 October announcement. This part of the scheme, which also takes effect from 1 November 2020, is now called '**JSS Closed**'.

On 22 October the Government also issued a new factsheet and policy paper giving more details on the eligibility criteria, conditions and timescales for making claims under both parts of the scheme. This information is referred to below and [here](#) in relation to JSS Closed.

### Job Support Scheme: 'JSS Open'

In light of the resurgence in COVID cases as we enter the winter months, and in anticipation of the further strain on businesses this could cause, the UK Government announced the Job Support Scheme. This now comprises two parts: JSS Open and JSS Closed.

JSS Open (as the original iteration of the scheme is now called) is a new incentive to protect 'viable' jobs – which the Government has decided means jobs where the employee is needed to work at least 20% of their normal working hours.

If employees are needed for fewer hours than this, no support will be provided under the Job Support Scheme unless they are unable to work at all because the employer's premises were legally required to close and JSS Closed applies.

The Government has released information setting out basic details of the scheme; further guidance is expected in the future. In the meantime, answers to some of the most frequently asked questions can be found below.

When does JSS Open start and for how long will it run?

The new scheme will open on 1 November and will run for six months, until the end of April 2021. However, the Government has stated (as part of its 22 October announcement) that there will be a review of the 'increased support' in the new year.

Employers will be able to claim payment under the scheme in arrears. Claims can be made from 8 December.

Which employers can claim under JSS Open?

All employers with a UK (or Channel Island or Isle of Man) bank account and enrolled for PAYE Online can theoretically claim under the scheme. It is not necessary to have used the furlough scheme in the past.

Small and medium sized employers – and registered or exempt charities – will not have to meet any financial requirements to claim under the scheme.

'Large employers' (with 250 or more employees on 23 September 2020) will need to undertake a Financial Impact Test.

As 'large employer' is defined by reference to individual legal entities, it appears that groups of companies in which no single company has 250 or more employees across its payrolls will not need to meet the Financial Impact Test.

What is the Financial Impact Test for large employers (excluding charities)?

The test is intended to ensure that the scheme is only available to large employers whose turnover has stayed level or is lower now than before experiencing difficulties from COVID-19. (Organisations with staff costs that are fully publicly funded are also not expected to claim under the scheme.)

This will normally be assessed by reference to the VAT returns submitted by the employer in Autumn 2020 compared with Autumn 2019. Details are provided in the Government's policy document. For large employers that are not VAT registered, further guidance is promised by the end of October 2020.

The test only needs to be undertaken once, before the first claim under the scheme.

The Government says it expects that large employers – and their corporate groups – will not make capital distributions whilst using the scheme (eg dividends or profit distributions to partners). This is not a legal requirement but the Government says it 'encourages businesses to reflect on their responsibilities and that taxpayers should be able to rely on public money only being claimed where it is really needed'.

Which employees are eligible to be placed on JSS Open?

The employee must have been:

- employed on 23 September 2020; and
- on the employer's PAYE payroll between 6 April and 23 September 2020. This flexibility in dates accommodates zero hours and temporary workers.

At the time of being placed on JSS Open, the employee must also work at least 20% of their usual hours. (Before 22 October the Government had said it would be 33%.)

The Government has said that the employee must receive their normal rate of pay from the employer for the hours they work, and this must meet all relevant minimum wage requirements.

It has also said that the working hours can be spent on training – meaning, in effect, that the scheme is available to employers who don't need their employees at work but can afford to pay them (at their normal rate of pay) to undertake training for at least 20% of normal working hours whilst they wait for work levels to increase.

The Government has also said expressly that the scheme can cover variable, temporary and zero hours employees – but they will still need to meet the 20% requirement.

What does the employer need to do to place employees on JSS Open?

In addition to ensuring that the eligibility criteria are met, the employer must reach a written 'temporary working agreement' with the employee (which will set out temporary contractual changes to hours and pay etc).

This agreement (which must cover at least seven consecutive days) must be made available to HMRC on request. Other record keeping requirements apply.

The Government has said further guidance on what to include in the written agreement will be available at the end of October 2020.

How much can employers claim per employee and how much does the employee receive?

Under the rules of the scheme the employee must be paid their usual wage for the hours they work.

For every hour they do not work, they will receive up to 2/3 of their usual hourly wage, being:

- 5% from the employer (capped at a maximum of £125 per month, depending on how many hours they work); and
- 61.67% from the Government (capped at a maximum of £1,541.75 per month, again depending on how many hours they work).
- Income tax and employee NICs will be deducted in the usual way.

(Before 22 October the Government had said that this 2/3 would be split as follows: 1/3 from the employer (with no cap); and 1/3 from the Government (with a cap at £697.92 per month.)

The employee will therefore be agreeing to no pay for the remaining 1/3 (or more if the caps apply) unless the employer tops up their wages at its discretion.

The employer will still have to pay Class 1 employer National Insurance contributions and any pension contributions in respect of each employee.

The Government says the intention is that an employee who works the minimum 20% hours (but does not normally earn more than the average monthly wage of £3,125, on which the caps are based) will overall earn 73% of their normal salary. Anyone who works more will earn a greater percentage overall.

Sample calculations will be set out in further Government guidance to be provided, which hopefully will clarify how the caps are affected by hours worked.

How are claims calculated?

The Government has provided some guidance on how to calculate an employee's usual wages and hours. Further guidance is promised by the end of October.

An employee's usual wage (on which the claim for 61.67% will be based) will take into account regular payments that the employer is obliged to make (eg contractual salary, overtime and commission payments) but not discretionary or non-cash payments. For employees with variable pay, the employer will need to look at the wages paid to the employee over different reference periods in the last year and take the greatest of these for the purposes of the calculation. Guidance is also provided on how to determine an employee's usual hours, again looking at different reference periods over the last year where appropriate.

When can claims be made and when will grants be paid?

The scheme will be open for claims from 8 December.

Grant payments will be made in arrears, reimbursing the employer for the Government's contribution on a monthly basis.

Once the scheme is open, a claim can only be submitted in respect of a given pay period, after the employee has been paid by the employer and that payment has been reported to HMRC in the form of an RTI return.

The Government has promised further guidance on the claims process by the end of October.

Can employers ask employees to work more than 20% of their normal hours?

Yes. They will still receive up to 2/3 of their usual hourly wage for the unworked hours (5% from the employer and 61.67% from the Government, subject to the caps) so the more they work, the greater the proportion of their usual weekly wage they will receive.

Can employees be moved on and off JSS Open?

Yes. Employees can be placed on and taken off the scheme as needed, with their agreement. However, each period that the employee is 'on the scheme' must last at least seven days.

Can an employer claim under JSS Open for an employee who is to be made redundant?

The latest guidance says an employer cannot claim for an employee who has been made redundant or is serving a contractual or statutory notice period during the claim period. This does not wholly rule out the possibility of claiming for an employee who is under consultation for possible redundancy, although this would not appear to fit with the spirit of the scheme (to protect viable jobs). Further guidance might clarify this point.

Are there any other rules of the scheme to be aware of?

The latest factsheet no longer states that the Government's 'expectation is that employers cannot top up their employees' wages above the two-thirds contribution...'. Indeed, it says that they may now do so at their discretion.

HMRC intend to publish the name of employers who have used the scheme, and employees will be able to find out if their employer has claimed for them. HMRC will continue to operate a hotline for individuals to make reports of fraudulent claims.

The Government has said it will introduce parental pay legislation as soon as possible to avoid parents on maternity / adoption / paternity / shared parental / parental bereavement leave losing out on parental pay because of being put on the Job Support Scheme during the relevant assessment period.

The Government has said further guidance will be available at the end of October 2020.

If you need further explanation or help with the Job Support Scheme, please speak to a member of [our employment team](#).

# Authors

## Claire Christy

PARTNER | LONDON

Employment

 +44 20 7597 6170

 [claire.christy@withersworldwide.com](mailto:claire.christy@withersworldwide.com)

## Hugh More

PARTNER | LONDON

Employment

 +44 20 7597 6575

 [hugh.more@withersworldwide.com](mailto:hugh.more@withersworldwide.com)

## Christina Morton

PROFESSIONAL SUPPORT LAWYER |  
LONDON

Employment

 +44 20 7597 6654

 [christina.morton@withersworldwide.com](mailto:christina.morton@withersworldwide.com)

## Emma Sanderson

CONSULTANT | LONDON

Employment

 +44 20 7597 6017

 [emma.sanderson@withersworldwide.com](mailto:emma.sanderson@withersworldwide.com)