




Yesterday, the Chancellor announced further increases in financial support for UK businesses to help them over the next six months.

The two key changes for employers are as follows:

- Job Support Scheme (JSS)** – First of all, there appears to have been a name change! The government is now drawing a distinction between the “JSS Open” (previously referred to as the Job Support Scheme) and the “JSS Closed” (previously known as the Job Support Scheme Expansion). The former is targeted at those businesses that are continuing to trade (albeit at reduced levels) and the latter at businesses required to close for a period of time due to local or national restrictions.
 - JSS Open** – The key changes are that government contributions will be more generous and the number of employees who will be eligible to participate will be greater. Employers will now only be expected to pay 5% of the cost of unworked hours (up to a cap of £125 per month) instead of the 33% originally announced, with the government picking up the cost of 61.67% of hours not worked (up to a cap of £1,541.75 per month). Furthermore, the minimum number of hours that employees will be required to work to be eligible to participate will be reduced from 33% to 20%, so many more employees will potentially be covered by the scheme.
 - JSS Closed** – No changes here. Employers will still be required to pay their staff 67% of their normal wages (to a cap), but the government will cover 100% of these costs, excluding National Insurance and pension contributions.
- Business grants** – There will be additional funding to support cash grants of up to £2,100 per month primarily for businesses in the hospitality, leisure and accommodation sectors in Tier 2 areas that are seriously impacted by restrictions but not legally required to close. These grants will be retrospective so any business that has been under enhanced restrictions since August can backdate their grant application.

Click on the relevant scheme below to read our quick guides to the Job Support Scheme (Open and Closed) and the Job Retention Bonus Scheme (JRBS).

-  [JSS Open](#)
-  [JSS Closed](#)
-  [Job Retention Bonus](#)

Please note that these guides are intended as a high level overview only and should not be regarded as a substitute for legal advice.

What is the JSS Open?	<p>Previously known simply as the “Job Support Scheme,” the JSS Open is the increased support now being offered to businesses that are open but facing decreased demand and is designed to encourage employers to retain staff on shorter hours rather than make them redundant.</p> <p>It is a UK-wide scheme (so not restricted to particular sectors or regions) and will be open to eligible employers (see below) even if they did not use the Coronavirus Job Retention Scheme (CJRS).</p>
When does it start?	<p>It will be available from 1 November 2020 and will run for six months, until 30 April 2021.</p> <p>The government will review the scheme in January so there may be further changes to it at that time, most likely in the form of increases to the level of employer contributions and the minimum number of hours required to be worked while on the scheme.</p>
Are all employers eligible to use the scheme?	<p>Employers will need to have a UK bank account and UK PAYE scheme to be able to claim the grant.</p> <p>Large employers (defined as “a legal entity with 250 or more employees across their payrolls on 23 September 2020”) will only be able to apply for the grant if they satisfy a financial impact test and can show that their “turnover has remained equal or has decreased compared to the previous year.” The test is going to entail HMRC looking at your VAT returns!</p> <ul style="list-style-type: none">• Large employers that are VAT registered and submit quarterly VAT returns must compare the total sales figure on their VAT return, which is due to be filed and paid between 31 August 2020 and 7 November 2020, with the total sales figure from the same quarter in 2019.• Large employers that submit monthly VAT returns must compare the three consecutive months, which are due to be filed and paid by 7 November 2020 with the same period in 2019.• Large employers that file less frequently must compare the three consecutive months which are due to be filed and paid by 7 November 2020 with the same period in 2019, but will need to have submitted a VAT return between 31 August and 7 November 2020 to be eligible.• Large employers that are part of a VAT group must use the turnover figures for the VAT group for this calculation. It is possible that in this situation the “success” of one member of the group of companies could offset the “adversity” of another. <p>With the possible exception of the last test above, employers will, therefore, be looking at the performance of individual companies, not group performance.</p> <p>This test will have to be taken before the employer first makes a claim under the scheme. We anticipate there will be some sort of box to be ticked on the online system to confirm you satisfy the criteria and, clearly, HMRC will have access to the information to be able to check it is correct. HMRC is presumably using VAT returns because they are prepared and submitted relatively regularly and so the data is readily available. Examples of how to do the test are contained in the policy paper.</p> <p>There will be no financial impact test for small and medium enterprises, i.e. those with fewer than 250 employees on 23 September 2020.</p> <p>Employers must also have some or all of their employees working a reduced schedule on at least 20% of their usual hours.</p> <p>Fully publicly funded organisations will not be expected to use the scheme, but partially funded organisations will be eligible “where their private revenues” have been disrupted (whatever that means).</p> <p>HMRC intends to publish the names of employers that use the scheme, presumably as some form of subconscious deterrent (see below).</p>

<p>Can employers make capital distributions while claiming the JSS grant?</p>	<p>The policy paper says that HMRC “expects” that large employers (those with 250 or more employees) and their corporate groups using the scheme will not make capital distributions while claiming the JSS grant. This includes dividends, charges, free or other distributions or any equivalent payments that a partnership may make to its partners.</p> <p>The government says that it would “encourage” businesses to reflect on their responsibilities and that taxpayers should be able to rely on public money only being claimed where it is clearly needed. Therefore, making capital distributions is not a legal bar to claim the grant, but be prepared for some negative press if you claim it and then go on to pay dividends, etc.</p>
<p>Which employees can we claim for under the scheme?</p>	<p>Eligible employers will be able to claim for “employees who were on their payroll between 6 April 2019 to 11.59 p.m. on 23 September 2020.”</p> <p>At first blush, this suggests employees must have been employed for the whole of that period, but this does not appear to be the case because the policy paper then goes on to say: “This means an RTI Full Payment Submission notifying payment in respect of that employee must have been made to HMRC at some point from 6 April 2019 up to 11.59 p.m. on 23 September 2020.” In other words, the relevant employees must only have been on your payroll at some point during this period.</p> <p>While employees must have been in employment on 23 September 2020, it seems that as with the CJRS, if they left after this date and are then re-hired, an employer can claim for them under the scheme. Maybe this is designed to catch employees who were dismissed at a time when their employer did not think it would receive any financial support for them and to encourage such employers to re-hire them. There is no statement that the re-hire must be with unbroken continuity of employment or on the same terms as before.</p> <p>The policy paper refers to “employees” but, as with the CJRS, staff on any type of contract are eligible, including those on variable or zero hours contracts and agency workers, provided they are paid through PAYE.</p> <p>Employers will be able to claim under the JSS Open and JSS Closed at the same time for different employees or where part of the business has to be closed while the rest is not; they cannot claim for the same employee under both schemes at the same time, though could do so consecutively.</p>
<p>How will the new scheme work?</p>	<p>Employees will need to work at least 20% of their usual hours and they should be paid as normal for these. The government will keep this minimum threshold under review and may increase it after the first three months.</p> <p>The government will then pay 61.67% of “reference salary” (see below) for the hours not worked up to a cap of £1,541.75 per month, with the employer contributing 5% of reference salary for hours not worked up to a cap of £125 per month. These caps are, apparently, based on a monthly reference salary of £3,125, approximately £37,500 per annum.</p> <p>The caps are reduced according to the proportion of hours not worked. Further guidance on this will be available shortly.</p>
<p>Can employers “top up” wages and still claim under the JSS Open?</p>	<p>Yes. The policy paper says that employers will be able to top up employees’ wages above the level of minimum contributions if they wish.</p>

What should employers include in the calculation of wages?

The policy paper says that an employee's "reference salary" is made up of the regular payments they are entitled to receive, including:

- Regular wages
- Non-discretionary payments for hours worked, including overtime
- Non-discretionary fees
- Non-discretionary commission payments
- Piece rate payments

Calculations cannot include payments made at the discretion of the employer or a client, where the employer or client was under no contractual obligation to pay, including:

- Any tips, including those distributed through tronc
- Discretionary bonuses
- Discretionary commission payments
- Non-cash payments
- Non-monetary benefits like benefits in kind and salary sacrifice schemes

In other words, we are looking at similar calculations to those used under the CJRS.

For employees who are paid a fixed salary, the reference salary will be the greater of:

- The wages payable to the employee in the last pay period ending on or before 23 September 2020
- The wages payable to the employee in the last pay period ending on or before 19 March 2020 (this may be the same as that used for the CJRS).

For employees whose pay is variable, the reference salary will be the greater of:

- The wages earned in the same calendar period in the tax year 2019 to 2020
- The average wages payable in the tax year 2019 to 2020
- The average wages payable from 1 February 2020 (or the employee's start date if later) until 23 September 2020.

As with the CJRS, there are different calculations for working out an employee's usual hours – fixed or variable. Further details can be found in the policy paper. Beware, they are as long and complicated as the ones you had to do under the CJRS!

<p>What is the position with regard to National Insurance and pension contributions?</p>	<p>The grant from the government will not include National Insurance contributions (NICs) or pension contributions. These will remain payable by the employer. Therefore, employers will be responsible for paying income tax, employer and employee NICs on the full amount paid to employees, including any amounts subsequently met by the grant.</p> <p>The policy paper says that employers and employees must also still pay pension contributions in accordance with the applicable pension scheme terms, unless the employee has opted out or stopped saving into their pension. This is what we were expecting and broadly reflects the position under the CJRS. It means that employers should check their pension scheme rules/contracts of employment regarding, for example, definitions of pensionable salary and the rules regarding payment of pension contributions. Checks should also be carried out to ensure adequate death benefit cover remains in place and that an individual's absence from work does not cause any issues with other pension scheme rules, such as temporary absence rules.</p> <p>Note that, as with the CJRS, if there is a salary sacrifice system in place in respect of pension contributions, some further complications can arise regarding the calculation and payment of contributions and we would recommend seeking advice to ensure compliance.</p>
<p>What is the position regarding holidays?</p>	<p>This is not dealt with in the policy paper or the factsheet. If the government adopts the same approach as with the CJRS, if an employee takes holiday while on short-time work arrangements, any holiday pay will have to be calculated based on usual earnings, i.e. the employee must receive 100% of their usual pay, but we will have to wait and see. Maybe this will be picked up in the further guidance that has been promised. We assume the employer will be able to claim the JSS Open support for holiday taken by employees on the scheme.</p>
<p>Are employers required to obtain the consent of employees to be eligible for the grant?</p>	<p>Yes. To be eligible for the grant, employers will have to “agree” any new short-time working arrangements with affected staff (or unions) and notify them of it in writing.</p> <p>The written notification must be made available to HMRC on request. HMRC will apparently publish further guidance on what to include in it by the end of October (so next week at the latest).</p> <p>Any temporary working agreement must cover at least seven consecutive days.</p>
<p>Do we need to have written agreements in place with affected employees?</p>	<p>See comments above.</p>
<p>Can employees do any training while on short-time working?</p>	<p>Yes. It seems that they can do training during working hours and non-working hours.</p> <p>If training takes place during working hours, any such hours must be paid at normal pay and will count towards 20% of their usual hours.</p> <p>Any training that takes place during non-working hours must be paid at least at National Minimum Wage rates, which may mean the employer needs to “top up” an employee's wages.</p>
<p>Can employees work for others while on short-time working?</p>	<p>This is not dealt with in the policy paper or the factsheet. On the face of it, if an employee works for a different employer during his/her non-working hours, this would not invalidate a claim under the scheme. It would be for individual employers to set out any expectations re: working for others.</p>
<p>What happens to staff who are due to go on family leave at some point?</p>	<p>As with the CJRS, the government has said that it will introduce legislation to ensure that parents who are due to go on maternity, paternity, adoption leave, etc. will not lose out on their entitlement to SMP, SPP, SAP, etc. as a result of being put on the JSS during the relevant period.</p>

Can employers rotate employees on and off short-time working?	Yes. The factsheet says that employees will be able to “cycle on and off” the scheme and they do not have to be working the same working pattern each month, but each short-time working arrangement must cover a minimum period of seven consecutive days.
Can we make employees redundant if we are using the scheme?	The scheme does not prohibit employers from making redundancies. It does, however, state that employers cannot claim for employees who have been made redundant or are serving a contractual or statutory notice period (probably only as given by the employer) during the claim period.
What about employees who have TUPE'd across?	The policy paper and the factsheet do not deal with this situation, so we will have to wait for the further guidance. Presumably, as with the CJRS, employers will be able to place employees who have TUPE'd across to them on short-time working arrangements but we await the details of what will be required.
What records should employers keep?	Employers must retain records relating to the terms of the temporary working arrangements for employees for five years. It is also crucial they keep records of how many hours employees work and the number of usual hours they are not working to demonstrate both that the minimum 20% threshold was met and that no more hours were being worked than as set out in their JSS Open claim.
How do employers make a claim under the scheme?	Employers will be able to make a claim online from 8 December 2020 and they will be paid on a monthly basis. Grants will be payable in arrears, meaning that a claim can only be submitted in respect of a given pay period after payment to the employee has been made and that payment has been reported to HMRC via a RTI return. Apparently, further guidance on the steps employers need to take to calculate and make a claim to the JSS Open will be published “by the end of October”.
What is the inter-relationship with the JRBS?	The factsheet says that employers using the JSS Open will still be able to claim the Job Retention Bonus (JRB) “if they meet the eligibility criteria”. It would, therefore, seem that provided the employee is paid at least £1,560 over the relevant three months, even if some of this money is then claimed back by the employer under the scheme, the employer will remain eligible to claim the bonus (subject to meeting any other relevant criteria).
Where can employers find further information about the scheme?	Link to factsheet here . Link to policy paper here .

JSS Closed

What is the JSS Closed?	Previously referred to as the Job Support Scheme Expansion, the JSS Closed is the support being offered to businesses that are legally required to close their premises as a direct result of COVID-19 restrictions set by one or more of the four governments of the UK.
When does it start?	The scheme will also be available to employers from 1 November 2020 for six months, with a review point in January. It may well be that at that point, the proportion of salary borne by the scheme will reduce.
Which employers are eligible to use the scheme?	<p>Employers will need to have a UK bank account and UK PAYE scheme to be able to claim the grant.</p> <p>The JSS Closed will only be available to UK businesses whose premises are legally required to close for a period as a direct result of COVID-19 restrictions set by the government, either nationally or locally. This will include premises compulsorily restricted to delivery or collection-only services from their premises and those restricted to provision of food and/or drink outdoors and which are not, therefore, “closed” completely.</p> <p>Rather unhelpfully, the policy paper says that this is not (!) a complete list of all the conditions for eligibility for JSS Closed and that further guidance will be published by the end of October (so, again, next week some time).</p> <p>Businesses will only be able to claim the grant for the period during which they are subject to such restrictions. This is not for businesses that choose to close briefly for economic or convenience reasons, even if that choice is driven by the pandemic or measures taken to combat it.</p> <p>As was the case with the CJRS, fully publicly funded organisations will not be expected to use the scheme but partially funded organisations will be eligible “where their private revenues” have been disrupted.</p> <p>There is no financial impact test for JSS Closed.</p> <p>HMRC intends to publish the names of employers that use the scheme.</p>
Can employers make capital distributions while claiming the JSS grant?	See comments above re: JSS Open. The same provisions apply to JSS Closed.
Which employees can we claim for under the scheme?	<p>Eligible employers will be able to claim the JSS Closed grant for employees:</p> <ul style="list-style-type: none">• Whose primary workplace is at the premises that has been legally required to close• The employer has instructed to (and do) cease work for at least seven consecutive calendar days <p>Again, rather unhelpfully, the policy paper says this is not a complete list of employee eligibility requirements for JSS Closed and further guidance will be published by the end of October. Has anyone else got the feeling that they ran out of time to get this done before the Chancellor had to make his announcement?</p>
How will the new scheme work?	Under the scheme, employees who cannot work due to the restrictions will receive two thirds of their normal pay, paid for by their employer but fully funded by the government, up to a maximum of £2,083.33 (what happened to rounding up?) per month, although employers will be able to pay more than this if they wish.

Can employers “top up” wages and still claim under the JSS Closed?	Yes, see response to the answer above.
What should employers include in the calculation of wages?	The government has not yet published the calculations for JSS Closed. Apparently, further guidance will be published “at the end of October” on how to work out the reference salary for JSS Closed, but presumably it is going to be pretty similar to the calculation for JSS Open.
What is the position with regard to National Insurance and pension contributions?	<p>As with JSS Open, employers will be responsible for paying income tax, employer and employee NICs on the full amount paid to employees, including any amounts subsequently met by the grant.</p> <p>The policy paper says that employers and employees must also still pay pension contributions in accordance with the applicable pension scheme terms, unless the employee has opted out or stopped saving into their pension. Again, this is what we were expecting and broadly reflects the position under the CJRS. It means that employers should check their pension scheme rules/contracts of employment regarding, for example, definitions of pensionable salary and the rules regarding payment of pension contributions. Checks should also be carried out to ensure adequate death benefit cover remains in place and that an individual’s absence from work does not cause any issues with other pension scheme rules, such as temporary absence rules.</p> <p>Note that, as with the CJRS, if there is a salary sacrifice system in place in respect of pension contributions, some further complications can arise regarding the calculation and payment of contributions and we would recommend seeking advice to ensure compliance. At this stage, the government has not produced full details of the approach to be adopted under the JSS Closed so further guidance may influence the correct approach.</p>
What is the position regarding holidays?	This is not dealt with in the policy paper or the factsheet. If the government adopts the same approach as with the CJRS, if an employee takes holiday any holiday pay will have to be calculated based on usual earnings, i.e. the employee must receive 100% of their usual pay, but we will have to wait and see. Maybe this will be picked up in the further guidance that has been promised. We assume that taking holidays will not disentitle employees from the JSS Closed support.
Are employers required to obtain the consent of employees to be able to claim the grant?	Yes. To be eligible for the grant, employers must reach agreement with affected employees (or trade unions) and notify them in writing that they have been instructed to stop working for a minimum of seven consecutive calendar days. The notification must be available for view by HMRC on request.
Can employees do training while not working?	As with the CJRS Open, it seems that employees can do training during non-working hours. Any training that takes place during non-working hours must be paid at least at National Minimum Wage rates, which may mean the employer needs to “top up” an employee’s wages.
Can employees work for others while not working for their employer?	This is not dealt with in the policy paper or the factsheet. On the face of it, if an employee works for a different employer during his/her non-working hours, this would not invalidate a claim under the scheme. It would be for individual employers to set out any expectations re: working for others.
What records should employers keep?	Employers must keep records relating to the terms of these arrangements for each employee. They must keep a written record of the agreement for five years.

<p>Can we make employees redundant if we are using the scheme?</p>	<p>The policy paper says that employers cannot claim for employees who have been made redundant or are serving a contractual or statutory notice period during the claim period. We believe this to be limited to notice given by the employer.</p>
<p>How do employers make a claim under the scheme?</p>	<p>Employers will be able to make a claim online from 8 December 2020 and they will be paid on a monthly basis.</p> <p>Grants will be payable in arrears, meaning that a claim can only be submitted in respect of a given pay period after payment to the employee has been made and that payment has been reported to HMRC via a RTI return.</p> <p>Apparently, further guidance on the steps that employers need to take to calculate and make a claim to the JSS will be published “by the end of October”.</p>
<p>What is the inter-relationship with the JRBS?</p>	<p>The factsheet says that employers using the JSS will still be able to claim the JRB “if they meet the eligibility criteria”. It would seem that provided the employee is paid at least £1,560 over the relevant three months, even if some of this money is then claimed back by the employer under the scheme, the employer will remain eligible to claim the bonus (subject to meeting any other relevant criteria).</p>
<p>Where can employers find further information about the scheme?</p>	<p>Unfortunately, for the JSS Closed, there are fewer details available about the “nitty gritty”.</p> <p>The policy paper can be found here.</p>

Job Retention Bonus

What is the JRB?	<p>The JRB is a £1,000 one-off payment that will be paid to employers by the government for every employee they furloughed under the CJRS and kept continuously employed until 31 January 2021. The bonus is for the employer. It does not have to be paid to employees (unlike the furlough grant). It will be taxable as a corporate receipt, so the net benefit to the business is prospectively somewhat smaller than advertised.</p> <p>The aim of the JRB is to encourage employers to retain staff once the CJRS closes at the end of this month. If all furloughed staff are retained until 31 January 2021, it will, apparently, cost the government £9 billion, though there will no doubt be corporation and income tax receipts to offset that to a material degree.</p>
Which employers are eligible to claim?	<p>Employers can claim a bonus if they have furloughed employees, made an eligible claim for them under the CJRS and delivered certain up-to-date payment information to HMRC.</p> <p>Any employer that has repaid CJRS sums to HMRC (e.g. because trading conditions were not as bad as anticipated) will not be eligible to claim the JRB in respect of those affected employees.</p>
Which employees are covered?	<p>Employers can claim for employees who:</p> <ul style="list-style-type: none">• Were furloughed and the subject of a valid CJRS claim• Have been continuously employed by the employer from its most recent CJRS claim in respect of them until at least 31 January 2021• Are not under “notice of termination” (see below)• Have received at least one payment in each of the relevant three tax months (6 November 2020 to 5 February 2021), the total gross value of which must be at least £1,560. HMRC has produced examples of employees and the minimum income threshold for these purposes. <p>Employers can claim for all employees who meet these criteria, including office holders and agency workers, provided in all cases that a valid claim was made for them under the CJRS.</p> <p>If the employer gives notice before the end of January then that is that and no JRB claim can be made. What is slightly unclear is what happens if it is the employee who gives notice. The guidance suggests that an employer would not be eligible to claim in respect of that employee because they would be “serving a contractual or statutory notice period,” which would seem to cover notice given by either party.</p> <p>The fourth Treasury Direction on the other hand appears to refer to the employer not “terminating the employee’s employment” and mentions employees “on notice of termination,” which would seem to suggest that provided the employee is still in employment on 31 January, the employer could make a claim for them even if they have resigned and are working out their notice. It would seem unfair that an employer could forfeit the JRB through no fault of its own (and despite having incurred all the costs of keeping the employee on since the end of their furlough) but at this stage (though we think it is not what was intended) the safest bet would probably be to assume that you cannot claim in respect of employees who give notice before the end of January.</p>
How can employers claim the bonus?	<p>There will be another online system for claiming the bonus. Further guidance is to follow on how to access the online system once it has been set up.</p>
When can employers submit their claim?	<p>Employers will be able to make a claim between 15 February and 31 March 2021.</p>

What about employees who have TUPE'd across?	According to the guidance, new employers may be eligible to claim the JRB in respect of employees of a previous business who have transferred across under the TUPE Regulations, but only where the transferred employees have been furloughed and successfully claimed for under the CJRS by the new employer, thereby excluding as a start all those incoming after 31 October this year.
What if you are contemplating redundancies?	As set out above, employees will have to be still in employment and not under notice on 31 January next year for a valid claim to be made in respect of them. Any redundancy notices that are served prior to the end of January 2021 will, therefore, mean the employer cannot make a claim in respect of those employees.
Is there any link with the JSS?	The two schemes are separate, but the guidance for the JRB makes it clear that employers will be able to make a claim for a bonus even if they use the JSS provided, of course, they can satisfy the minimum income threshold referred to above (£1,560 over the relevant three-month period).
What should employers do now?	<p>Accurate record-keeping is key to avoid any claim for the JRB being jeopardised.</p> <p>HMRC advises that employers take the following steps now to ensure they are ready to make a claim:</p> <ul style="list-style-type: none"> • Still be enrolled for PAYE online • Comply with their PAYE obligations to file PAYE accurately and on time via Real Time Information (RTI) for all employees between 6 April 2020 and 5 February 2021 • Keep their payroll up to date and ensure they report the leaving date for any employees that stop working for them before the end of the pay period that they leave in • Use the irregular payment pattern indicator in RTI for any employees not being paid regularly (this will include those payments made to staff to ensure that they are paid something in each of the three tax months from November to February referred to above) • Comply with all requests from HMRC to provide any employee data for past CJRS claims.

Contacts



Caroline Noblet

Partner, London
T +44 20 7655 1473
E caroline.noblet@squirepb.com



David Whincup

Partner, London
T +44 20 7655 1132
david.whincup@squirepb.com