

On Friday, the Chancellor announced additional support for businesses that will be legally required to shut for a period over the winter months as part of local or national restrictions. At this stage, we only have [HMRC's factsheet](#) to go on, but it seems the support will be provided by way of an extension to the Job Support Scheme (JSS), further details of which we also still await. Key points to note are:

- This new bit of the scheme will only be available for 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 apparently include premises compulsorily restricted to delivery or collection only services from their premises and which are not therefore "closed" completely. It is likely that a similar distinction will be made for other businesses where the cessation of one activity by order does not remove the ability (or need) to maintain others – so that the closure of a bar or cinema, for example, would probably allow the employer to maintain a skeletal crew of maintenance and facilities people, but still claim this allowance for the public-facing ticketing and catering staff whom the closure order affects more directly.
- 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. No further details have been provided at this stage, but the prime minister is due to make an announcement today, so we might have more information then.
- The scheme will pay a grant to affected employers based on the number of employees who have been required to stop working at the relevant premises. Employees will have to cease working for at least seven days.
- Under the grant, the government will pay up to two-thirds of an employee's normal pay up to a limit of £2,100 per month, equivalent to about £38,000 per annum. We believe that this will include "normal" earnings, including an allowance for commissions, etc., and so be consistent with the notional cap applicable to the rest of the Treasury's financial support structure. Employers will have to cover employer National Insurance contributions and automatic enrolment pension contributions in full, where applicable, but will not be required to contribute to the actual wage costs. Most of the likely targets for mandatory shut-downs – shops, pubs, restaurants, sports and live entertainment venues, etc. – will have staff on relatively low earnings and so this seems quite generously assessed.
- In line with the measures announced a couple of weeks ago, employers will not be able to make employees redundant or put them on notice of redundancy during any period for which they are claiming a grant for those employees. This does not mean that employers cannot make any redundancies; simply not of staff they are claiming the grant for.
- The scheme will 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.
- The factsheet issued with the initial announcement says that employers will be required to "agree the new scheme with the relevant staff, make any changes to the employment contract by agreement, and notify the employee in writing". As with the CJRS, we do not think this means you must have the prior written agreement of staff to the pay cut to be eligible to make a claim under the scheme. The safest (but simultaneously least practicable) approach would be to seek this, but this may be tricky in practice in light of the speed at which business closures may be introduced and administratively disproportionate given their hopefully limited duration. However, it still says that the employees must have "agreed" to the changes (this essentially means to any pay cut imposed as a result of the £2,100/month cap on support under the scheme – they obviously have little choice around stopping work, since by definition the premises are closed on government order). We suspect that this agreement will probably be adequately inferred from the fact of their not then turning up to work and not objecting to any part of the written instructions provided to them on that score. Employers should keep copies of their notices to their staff about this. Since a mandated closure is a mandated closure, their scope for meaningful legal challenge to this approach seems small – in the absence of express written consent in advance it may well strictly be a breach of contract or an unlawful deduction, but if the employee does not agree then, as with furlough, redundancy would seem the likely alternative. Working for others during a period of compulsory closure is likely to remain a matter for employer agreement.
- Interestingly, the factsheet says that HMRC intends to publish the names of those employers that use this scheme, which is a new development. Is this meant to act as a deterrent so that only those businesses that *really* need the government's support make use of it? It might seem a little unfair to try to make political capital out of an employer seeking help to deal with the costs of a closure over which it had no control.

- Further details on the scheme will be set out in guidance, we are told. This should hopefully be out soon, bearing in mind that November is fast approaching and that employers considering redundancies to take effect at the end of the furlough scheme this month will need to “stick or twist” very soon. The issue is, of course, compounded by the often very short notice of compulsory closures caused by the need to react to local spikes in infection rates – sometimes days only. Employers in particularly vulnerable industries might think it worth explaining this addition to the JSS to their staff in writing now partly by way of reassurance to them and partly so that if the worst happens, there is less to do at that time.

The government also confirmed that cash grants for businesses required to close in England will also be increased to up to £3,000 per month. These grants relate to the fixed costs of premises, etc., and not to the employees. They will be linked to rateable values, with up to £3,000 per month payable every two weeks, compared to up to £1,500 every three weeks that was available previously.

We will provide further details as and when they are published.

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