

# Job Support Scheme

*28 September 2020*

BACKHOUSE  
JONES

## Job Support Scheme

At the outset of this note, we would caveat the below by highlighting that the situation in respect of COVID-19 (“Coronavirus”) is a fluid one and one that is both rapidly and constantly changing. A number of the below points are based on announcements and publications by the UK Government, and it may be the case that forthcoming regulations and other statutory instruments are subject to a different interpretation.

### OVERVIEW

On Thursday 24 September 2020, Rishi Sunak announced that the current Coronavirus Job Retention Scheme (CJRS) or furlough as we now all know it, will come to an end as planned on 31 October 2020 stating that the Government cannot keep jobs that exist only inside the furlough scheme.

It will instead be replaced by the Coronavirus Job Support Scheme (CJSS) which is designed to protect ‘viable’ jobs in business who are facing lower demand in the winter months due to COVID-19. Essentially the CJSS will subsidise wages to keep people in jobs on shorter hours rather than face redundancy.

The Government published the Winter Economy Plan which outlines the CJSS together with a Government Factsheet and the detail in this guidance note is based on the facts as we know then to-date. We expect further detailed guidance to be published in due course.

Employers will continue to pay its employees for time worked, but the burden of hours not worked will be split between the employer and the Government (through wage support) and the employee (through a wage reduction), with

the desired outcome of the employee keeping their job.

### WHAT IS IT?

The scheme will open on **1 November 2020** and run for 6 months, until April 2021.

Employees must work at least 33% of their usual hours of work.

The Government will pay a third of hours not worked up to a cap, with the employer also contributing a third.

Employees will earn a minimum of 77% of their normal wages, where the Government contribution has not been capped. By way of example, an employee who works 33% of their usual hours, the company will pay 55% of usual wages and the Government will pay 22%.

Employers using the CJSS will also be able to claim the **Job Retention Bonus** if they meet the eligibility criteria.

### WHO IS ELIGIBLE?

There are no sector distinctions, the CJSS is not limited to any particular sector or setting.

All employers with a UK bank account and UK PAYE schemes can claim the grant.

Neither the employer nor the employee needs to have previously used the Coronavirus Job Retention Scheme.

All small and medium sized business will be eligible without assessment.

Large businesses will have to meet a financial assessment test, so the scheme is only available to those whose turnover is lower now than before Covid-19.

The Governments expectation is that large employers using the CJSS will not be making capital distributions, such as dividend

payments or share buybacks, whilst accessing the grant.

Employees must be on an employer's PAYE payroll on or before 23 September 2020. This means a Real Time Information (RTI) submission notifying payment to that employee to HMRC must have been made on or before 23 September 2020.

In months 4 to 6, the Government will consider whether to increase this minimum hours threshold.

Employees will be able to cycle on and off the scheme and do not have to be working the same pattern each month, but each short-time working arrangement must cover a minimum period of seven days.

#### WHAT DOES IT COVER?

For every hour not worked by the employee, both the Government and employer will pay a third each of the usual hourly wage for that employee.

The Government contribution will be capped at £697.92 a month which equates to an employee usually earning about £3,150 per month.

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

The grant won't cover Class 1 employer NICs or pension contributions, although these contributions will remain payable by the employer.

We expect that "Usual hours and wages" calculations will follow a similar methodology as for the Coronavirus Job Retention Scheme.

Employees who have previously been furloughed, will have their underlying usual pay and/or hours used to calculate usual

wages, not the amount they were paid whilst on furlough.

The indication set out in the Government fact sheet is that employers **cannot** top up their employees' wages above the two-thirds contribution to hours not worked at their own expense. We question whether this is intended as it is worded which suggests that they expect employees not to top up the missing 22%. It seems more likely that the Government doesn't expect employers accessing the scheme to be in a position to top up the missing wages, but it remains to be seen whether they will be barred from doing so if they wish.

Employees **cannot** be made redundant or put on notice of redundancy during the period within which their employer is claiming the grant for that employee. This suggests that the government will not contribute anything under the CJSS if an employee is working under notice of redundancy. That is in stark contrast to the position under the Coronavirus Job Retention Scheme, where the scheme did pay out for employees working their redundancy notice. However, employees can be moved off the scheme during the 6 month period so it doesn't appear to put a ban on redundancies completely but suggest that an employee would need to be taken off the scheme before being issued with notice of redundancy, with employers being unable to claim the grant once notice is given or an employee is made redundant.

#### HOW DO YOU CLAIM?

Employers will be able to make a claim online through Gov.uk from December 2020. 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 an RTI return.

Similar to the CJRS Employers must agree the new short-time working arrangements with their staff, make any changes to the employment contract by agreement, and notify the employee in writing. This agreement must be made available to HMRC on request.

## **FREQUENTLY ASKED QUESTIONS**

### **Which Employees' to place on the Jobs Support Scheme?**

1. Given that current employment laws remain enforceable, it is advised that you follow a compressed consultation process with your employees as follows:
  - a. Volunteers – ask employees if any are willing to accept the reduction in hours and if they accept the terms of the Jobs Support Scheme.
  - b. Vulnerable Persons – consider those individuals in the work force who may be identified in accordance with government guidance as being vulnerable or as identified by your risk assessment. It is advised to consult these employees individually and discreetly regarding the possibility of being placed on the Jobs Support Scheme.
  - c. Objective Criteria – lastly, take a view on the whole of the workforce and individually assess whether the employees should be placed on the Jobs Support Scheme with

reference to a fair and objective criteria.

### **What if I have some work available but not 33%?**

Even if a job is viable longer term, if you are not able to meet the minimum 33% hours worked, it would seem that employees will be prevented from accessing the scheme and may instead have to consider redundancies.

One option which may be open is to negotiate reduced working hours arrangements so that the 33% is based on an already reduced contractual working arrangement. However, we will need to await further detailed guidance as to how exactly the definition of 'usual hours' is set out as to whether this is a viable option.

There may be additional options available utilising the flexibility with the CJSS but it would be sensible to seek legal advice if you do not consider that you will be able to meet the 33% threshold.

**THIS IS GENERIC INFORMATION ONLY AND NOT LEGAL OR MEDICAL ADVICE. LEGAL ADVICE SHOULD BE SOUGHT FOR SPECIFIC ISSUES. PLEASE CONTACT OUR EMPLOYMENT AND COMMERCIAL LITIGATION TEAM ON 01254 828300**

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