



CRISIS PRACTICE

Coronavirus

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New Job Support Scheme to Replace Furlough Leave

A new Job Support Scheme has been announced in which the U.K. Government will top up the wages of employees working reduced hours due to the COVID-19 pandemic.

What is it?

The U.K. Chancellor Rishi Sunak has unveiled plans to continue protecting jobs through the winter in the government's "Winter Economy Plan". This comes in the form of a wage subsidy scheme which will top up the pay of workers who work at least a third of their normal hours. The scheme provides the option to employers of keeping employees on reduced hours rather than making them redundant.

The Job Support Scheme (**JSS**) will replace the Coronavirus Job Retention Scheme (also known as the Furlough Scheme), which is due to close on 31 October 2020. The Furlough Scheme has been winding down since August, with employers being required to pay increasing contributions in an attempt to encourage people back to work. However, nearly 3 million workers still remain on furlough and, by the end of October, employers will either have to bring the employees fully back on the payroll or make them redundant.

The JSS will come into effect on 1 November 2020 and run for six months, until the end of April 2021. The post-furlough JSS will provide a lifeline to employers and employees during the winter months while demand remains depressed. This will be particularly welcome news for those in the hospitality sector who have had to reduce their hours in light of the curfew imposed on pubs and restaurants this week.

How will the new scheme work?

Employees will be paid by their employer at their regular rates for the hours they work (not the 80% furlough rate).



The cost of the hours not worked will be shared between the government, the employer and the employee (through a wage reduction). Both the government and the employer will pay the employee a third of the hours not worked. The government's contribution will be capped at £697.92 per month.

By way of example, if an employee's normal wages are £2,000 per month and the employee works 50% of the time, they would get paid £1,000 by the employer as usual for their working time. For the hours not worked, the employer and the government would each pay a third of the remaining £1,000. In this example, the employee would get paid £1,666 for working half-time and still receive 83.3% of their usual pay.

The grants will be payable in arrears so the employer will bear the upfront wage costs. Unlike the Furlough Scheme, the grant will not cover employer NICs or pension contributions.

Employees cannot be made redundant or put on notice of redundancy during the period within which the employer is claiming the grant for that employee. There is no stated minimum as to how long an employee must remain in the scheme so it appears that employers may be able to move employees out of the scheme in order to make them redundant.

What happens with the shortfall in pay?

Employees who are not impacted by the government's capped contribution will receive at least 77% of their normal wages, even if they are only working one third of their hours. Employees affected by the cap will suffer more of a shortfall. The government factsheet states employees will share the burden of hours not worked through a wage reduction. Employers must agree the new short-time working arrangements with their staff. Any agreement must be in writing and made available to HMRC on request.

Curiously, the government factsheet states that the "expectation" is that employers cannot top up their employees' wages above the two-third contribution for hours not worked at their own expense. It is not clear whether employers will be legally barred from making top ups or whether the expectation is that employers who access the scheme cannot afford to do so.

Who can access the scheme?

To qualify for the scheme, employees must be working at least a third of their normal hours and be paid for that work as normal by their employer. The JSS is designed to protect "viable" jobs in which there is ongoing work, rather than support jobs which are effectively already redundant. This is very different to the Furlough Scheme which paid the wages of those unable to work at all. This will be problematic for sectors such as sport and entertainment in which there may still be limited or no demand for certain roles.

The JSS is not limited to any particular sectors. All U.K. small and medium sized business will be eligible for the scheme. This is usually defined as firms with 250 employees or less. Larger businesses will be eligible only if they can meet a financial assessment test to show their turnover has decreased. No details have been provided as to the level of decrease in profits required to meet this test or what constitutes a "large" business. The government factsheet states that it is "expected" that large employers using the JSS would not be making dividend payments or share buybacks whilst accessing the grant. Further details are expected over the coming weeks.

How does this work with the Furlough Scheme?

The JSS dovetails with the end of the Furlough Scheme. Employees who had their employment contracts varied in order to be furloughed will need to further agree to new short-time hours and reduced pay. Employers will need to consider whether there is sufficient ongoing work for employees to return to and, if not, how to select those that will return part-time and those who will be made redundant.



Neither the employer nor the employees need to have previously used the Furlough Scheme in order to access the JSS. Employers can claim under both the JSS and the Job Retention Bonus Scheme, under which employers receive a £1,000 bonus for each employee they bring back to work from furlough and retain until at least the end of January 2021.

What do employers need to do now?

While the full details of the scheme are unclear, employers need to start thinking about:

- whether they will qualify for access to the scheme and if so, whether they will make use of it?
- what work is likely to be available over the coming months and how will this be shared?
- which staff will be offered access to the scheme and on what selection criteria?
- will the costs to the employer of participating in the JSS outweigh the costs of making redundancies and vice versa?
- how will employee consent be obtained - will collective consultation be required?
- consulting on the JSS and part-time work as a suitable alternative as part of any redundancy consultation processes already underway.

Employers who wish to access the scheme from 1 November 2020 will need to move swiftly. It is going to take some time to get employees to agree to amend their employment terms to part-time status. If collective consultation is required to get that agreement, the process will take a minimum of 30 or 45 days (dependent upon numbers).

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