***BEFORE USING THIS LETTER, PLEASE NOTE: This template letter is intended for use to move employees from flexible furlough under the Coronavirus Job Retention Scheme (the CJRS) onto the Job Support Scheme for businesses that remain open but face decreased demand (the JSS Open) when the CJRS expires. It is based on the guidance available as at 26 October 2020 – click*** [***here***](https://www.gov.uk/government/publications/the-job-support-scheme/the-job-support-scheme)***. Note that there are various issues that are not currently addressed in the Government guidance, such as the interaction between holiday and the JSS Open and whether employees can work for another employer in their non-working hours and we have therefore not covered them in this template letter. HMRC have stated that they will produce more guidance by the end of October and, in particular, that they will publish more information on what to include in the written agreement by the end of October.***

***The JSS Open will commence on 1 November 2020 and is currently set to run until 30 April 2021. Under the JSS Open, eligible employers facing depressed demand will be given financial support to retain employees in their jobs on short hours, rather than making them redundant. To ensure that the jobs supported are viable, to be eligible under the JSS Open, employees will have to work a minimum of 20% of their usual hours and their employer will have to pay them at their normal contractual rate for those hours. The Government, together with employers, will then increase those people’s wages, cumulatively paying them 66.67% of their normal pay for the hours not worked: the employer contributes 5% of reference salary for the hours not worked, up to a maximum of £125 per month, with the discretion to pay more than this if they wish; the Government contributes the remaining 61.67% of reference salary for the hours not worked, up to a maximum of £1,541.75 per month. This will ensure employees continue to receive at least 73% of their normal wages, where they earn £3,125 a month or less. The effect of this is that 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). Like the Coronavirus Job Retention Scheme, the employer pays the employee the full amount due, but can then claim back the relevant contribution for the cost of the unworked hours from the Government. (Employers will be able to begin submitting claims on 8 December 2020.)***

***Wording in square brackets will require tailoring to reflect your company’s approach. We have included some brief drafting notes in red text for your information, which should be removed prior to sending this letter to employees. This template letter is designed to be used for employees who were placed on flexible furlough using Make UK’s template flexible furlough letter. If you did not use this letter, you should consider whether any part of this template needs to be amended to reflect the nature of the existing contractual arrangements you have in place with your employees and the way in which their furlough arrangements were agreed.***

***For more information on the JSS Open, please see our FAQs on ‘The Job Support Scheme for businesses that remain open (JSS Open)’ available on our website.***

Dear[*Employee Name*]

**ENDING FLEXIBLE FURLOUGH AND MOVING ONTO THE JOB SUPPORT SCHEME**

As you know, in view of the impact of the Covid-19 virus on the Company, it was necessary to place you on [a] period[s] of Furlough Leave followed by [a] period[s] of Flexible Furlough under the Government's Coronavirus Job Retention Scheme (CJRS). Your [current] period of Flexible Furlough began on [DATE].

As agreed in our letter of [date], during your Flexible Furlough [*EITHER:* we have continued to pay you 100% of your pay during your Furlough Working Hours and your Furloughed Hours.][*OR:* you were paid as normal during your Furlough Working Hours. For your Furloughed Hours, your normal entitlement to pay under your terms and conditions of employment was suspended, with your Furlough Pay calculated in accordance with the terms of the CJRS as 80% of your usual pay for your Furloughed Hours up to the maximum permitted under the CJRS for those hours.]

We are grateful for your understanding and cooperation during this difficult time. Your agreement to be placed first on Furlough Leave and then on Flexible Furlough [and to receive Furlough Pay] has helped us to [*INSERT details of how furlough has helped, e.g.* safeguard the business in a time of reduced demand, save employment costs and avoid/reduce the need for redundancies]. Unfortunately, the business is still facing significant challenges and we are not in a position to return to normal working when the CJRS comes to an end on 31 October 2020. [Following consultation with you, in][In] order to [avoid/reduce the need for] redundancies and to ensure that we retain your skills within the business, we therefore now wish to agree with you that you will move onto the Government’s Job Support Scheme for businesses facing decreased demand (JSS Open) with effect from 1 November 2020. This will impact on your pay and hours of work as described below.

Your usual hours are [NUMBER] per [day/week/month]. From [DATE], under the JSS Open, we will require you to work for [*insert number of hours to be worked – note this must not be less than one fifth of the employee’s usual hours*] hours per [day/week/month] (your ‘Reduced Working Hours’), with the remaining [NUMBER] hours per [day/week/month] constituting your ‘Non-working Hours’.

You will initially be required to work your Reduced Working Hours across the following days and times: [*INSERT DETAILS OF WORKING PATTERN (e.g. Monday to Friday, 8am to 12pm / Mondays and Tuesdays, 8am to 6pm)*]. [This [results in an increase/decrease to][remains the same as] the hours you have been working on Flexible Furlough.]

Should the number or pattern of Reduced Working Hours we require you to work change in the future, we will confirm your amended Reduced Working Hours and Non-working Hours and working pattern in writing. Your Reduced Working Hours will not drop below one fifth of your usual hours. We will aim to give you at least [NUMBER] days’ notice of any such change and expect you to be available to work increased or altered hours. (Please be aware that the Government has indicated that it will review the terms of the JSS Open in January 2021. For example, it is possible that the minimum Reduced Working Hours under the JSS Open may be increased above one fifth of usual hours.)

*NOTE: Employees will be able to cycle on and off the scheme and do not always have to be working the same pattern, but each short-time working arrangement must cover a minimum period of seven days. The available guidance does not provide detail on how ‘cycling on and off’ the scheme will work in practice. Accordingly, this template letter does not cover this.*

*As noted above, the employee must work at least one fifth of their usual hours. However, the Government will review the JSS Open in January and it is possible that it could increase this minimum hours threshold. In addition, your operational needs may alter as demand fluctuates, so you may need to vary the working pattern of employees on the JSS Open. We have included wording that is intended to set employees’ expectations that they may be asked to increase (or reduce) their Reduced Working Hours in the future and that they would be expected to be available. However, while it does not say it expressly, the tone of the Government guidance suggests that changes to working arrangements would need to be agreed with the employee in writing.*

*If you know at the point at which you are seeking to agree that employees should go onto the JSS Open that the number and/or pattern of hours that you will need them to work will fluctuate in a particular way, we think that you could provide for this changing working pattern in a single agreement. For example, you might need employees to work only a fifth of their usual hours during November, but half of their usual hours during December in order to satisfy pre-Christmas demand, reducing to one fifth of their hours again after Christmas. If you wish to provide for such a fluctuating working pattern in advance, you would need to adapt this letter accordingly.*

We will pay you [*INSERT DETAILS OF EMPLOYEE’S NORMAL CONTRACTUAL PRE- FURLOUGH PAY (e.g. hourly rate, shift allowances, etc.)*] for your Reduced Working Hours calculated in accordance with your terms and conditions of employment.

For your Non-working Hours, your normal entitlement to pay under your terms and conditions of employment will be suspended. Instead, for your Non-working Hours, we will pay you JSS Open Pay. This is currently 66.67% of your normal pay for your Non-working Hours, calculated in accordance with the rules of the scheme and subject to the maximum amounts set out in the scheme. The payment will be made up as follows:

* We will contribute 5% of your normal pay for your Non-working Hours, subject to the maximum set out in the Scheme.
* The Government will contribute 61.67% of your normal pay for your Non-working Hours, subject to the maximum set out in the Scheme.

[*Include if you are choosing to top up your contribution to the employee’s pay for Non-working Hours above the employer’s compulsory 5%*:In addition, in order to reduce the financial impact on you, we have chosen to top up the employer contribution towards pay for your Non-working Hours to [*insert details of any additional payments to be made*]*.*]

[*Include unless you are choosing to top up the employee’s pay to full pay:* Under the terms of the JSS Open, the remaining proportion of your normal pay for your Non-working Hours will not be payable, as the idea of the JSS Open is that 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).]

*NOTE: Employees are entitled to receive 66.67 % of their normal pre-furlough pay for their Non-working Hours, up to the cap set under the JSS Open. The level of grant payable by the Government to the employer (in arrears, following its reporting to HMRC of the payment made to the employee) is intended to cover up to 61.67% of the employee’s normal pay for the Non-working Hours. It will be calculated based on the employee’s normal salary, but will be capped at £1,541.75 per month. (Note that it is not yet clear from the available guidance whether this cap will be reduced pro rata based on the proportion of hours not worked, but we assume that this is the Government’s intention). The grant will not cover Class 1 employer NICs or pension contributions, although these contributions will remain payable by the employer. The employer will have to cover 5% of the employee’s normal pay for the Non-working Hours, up to a cap of £125 per month. However, employers have the discretion to pay more than this if they wish, so we have included optional wording for you to use if you intend to top up pay for Non-working Hours. Details of how to calculate JSS Open Pay are provided our FAQs on ‘The Job Support Scheme for businesses that remain open (JSS Open)’ available on our website.*

Your JSS Open Pay and your pay for your Reduced Working Hours will be subject to deductions for tax and employee national insurance contributions [and employee pension contributions]. As far as practicable, payments will be made on your normal pay days.

During the period of your participation in the JSS Open, your continuity of employment will continue.

[*IF YOU OPERATE A COMPANY SICK PAY SCHEME:* If any company sick pay is payable in respect of sickness during your participation in the JSS Open, it will be based on the adjusted rate of pay to which you are entitled during the JSS Open.]

*NOTE: The square bracketed language concerning company sick pay is intended to prevent employees from asserting that they should be entitled to full pay during any period of sickness absence under your company sick pay policy.*

*Note that the relationship between Statutory Sick Pay and the JSS Open has not yet been addressed in the available guidance.*

Your other terms and conditions of employment will remain as set out in your contract of employment during the period of your participation in the JSS Open.

*NOTE: We have assumed that, other than pay and hours of work (and company sick pay entitlement, if applicable), the employee’s terms and conditions will remain as set out in their contract of employment. However, if you do wish to make any other changes, you need to specify them here.*

Your participation in the JSS Open shall end on the earliest of the following events:-

1. the end date of the JSS Open (currently anticipated to be 30 April 2021); or

2. the Company no longer claiming under the JSS Open in respect of you; or

3. the Company requiring you to return to work on the basis of your normal contractual hours; or

4. your employment with the Company being terminated for any reason (whether by you or by the Company).

We will aim to inform you as early as possible of any of these events.

[We are currently working towards our business recovery and we are hopeful that the support that is available under the JSS Open will be sufficient to maintain your employment. However, please be aware that if the Company cannot afford to maintain your employment, we may consult with you about your possible redundancy and take steps to implement any necessary dismissal at the appropriate time, including while the JSS Open remains in operation.]

*NOTE: The above optional square bracketed paragraph acknowledges the possibility that redundancies may be necessary either before or after the JSS Open comes to an end. The Government guidance states, under the heading ‘Redundancy’, that an employer cannot claim for an employee who has been made redundant or who is serving a contractual or statutory notice period during the period for which the employer is claiming the JSS Open grant. In addition, any dismissal will be subject to employees’ ordinary employment rights (e.g. the right to a statutory redundancy payment and the right not to be unfairly dismissed).*

In order to implement these revised working arrangements and claim in respect of you under the JSS Open, we need a record of your agreement to the terms in this letter. Please confirm your agreement by signing and returning this letter to [name, position] via [contact details] by [DATE].

*NOTE: The Government guidance specifies that “employers must have reached written agreement with their employee (or reached written collective agreement with a trade union where the relevant terms are determined by collective agreement) that they have been offered a temporary working agreement. The agreement must be available for view by HMRC on request”. You must also keep a written record of the agreement for 5 years. As noted above, this template letter is intended for use to place employees who are currently on flexible furlough onto the JSS Open. Depending on their flexible furlough arrangements, moving onto the JSS Open may represent either an increase or a reduction in their working hours and pay. If any such reduction is significant, this may mean that some employees are reluctant to agree to move onto the JSS Open. We suggest that you seek legal advice if you encounter this issue.*

*Although it would be preferable for the company to have a copy of the letter signed by the employee as a record of acceptance, if the letter is sent to employees by email, they may not have access to printing and scanning facilities that would enable them to provide this. Accordingly, you could as an alternative provide for employees to confirm their agreement by replying to the company’s email using a set form of words, such as “I confirm my agreement to the variation of my terms and conditions of employment to place me on the JSS Open as described in the letter from the company dated [DATE]”, or using voting buttons.*

I would like to thank you for your continued support for the Company. If you have any queries or concerns about the working arrangements set out in this letter, please contact [name, position] on [contact details]. Equally, if the Government issues any further information about the operation of the JSS Open that impacts on the arrangements set out in this letter, we will let you know.

*NOTE: As flagged in the introductory drafting note at the top of this letter, there are various that we have not covered in this template letter because they are not currently addressed in the Government guidance, such as the interaction between holiday and the JSS Open and whether employees can work for another employer in their non-working hours. You may need to communicate with employees further about such issues when more detailed Government guidance is published.*

Kind regards

[Name, position]

\*\*\*\*

I confirm my agreement to the variation of my terms and conditions of employment as stated in this letter.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_

 (Employee)

***Disclaimer****: This letter and its drafting notes do not constitute specific legal advice and should not be relied upon as such.*