

Sixty second summary

COVID-19: AE guidance for DC schemes

The Pensions Regulator has published guidance for employers on the implications of the COVID-19 pandemic for automatic enrolment (AE) via defined contribution (DC) schemes.¹ The headlines are that AE duties continue as normal, but that there is some flexibility already available within the system and the Coronavirus Job Retention Scheme (CJRS) allows employers to recover some of their pension costs. Worked examples illustrate some issues that arise for employers using salary sacrifice or the alternative AE quality requirements², and the Regulator announces a relaxation of the statutory consultation requirements in some circumstances.

Auto-enrolment—business as usual

The guidance confirms that employers' AE duties (including re-enrolment and declarations of compliance) still apply, regardless of whether employees are still working or have been 'furloughed' using the CJRS. Employers are, however, reminded that there is some flexibility in the timing of enrolment and re-enrolment. Assessment of new or newly eligible members of staff can be postponed for up to three months, and re-enrolment processes can take place up to three months after the third anniversary of an employer's staging or previous re-enrolment date.

Whilst AE has fixed the minimum levels of pensions provision that must be made for jobholders, the contributions basis for each particular scheme will be set out in its governing documentation. Contributions should continue to be made on that basis, unless members opt out of pensionable service. Employers must not encourage jobholders to opt out or (if the facility exists under the scheme rules) to reduce their contribution levels below the minimum required by the AE legislation.

AE implications of the CRJS

In March 2020 the Government announced the creation of the CJRS, which allows employers to apply for a grant to recover some of their costs associated with employees who are 'furloughed'—not working, but kept on the payroll. Claims are limited to 80 per cent of an employee's wages, capped at £2,500 per month, plus the employer National Insurance Contributions and *some* of the employer pension contributions due on those reduced wages.³

The pensions-related claim will be limited to three per cent of the claimed wages after deduction of the lower limit of the AE qualifying earnings band (£512 a month for periods before 6 April 2020, and £520 a month for periods after 5 April 2020); and they cannot claim back more than they actually contribute in respect of a member. The pensions claim limit corresponds to the basic minimum employer contribution due under the AE legislation to a DC scheme. If the employer's actual contribution is higher (for example, because that is what is required under scheme rules or employment contracts, or because scheme contributions are based on total rather than AE qualifying earnings—or because the employer has a defined benefit scheme) the excess cannot be claimed back from the CJRS. The Regulator notes that in such cases the employer will have to calculate the CJRS claim in addition to its normal payroll pension contributions.

¹ *Automatic enrolment and DC pension contributions: COVID-19 guidance for employers* <www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/automatic-enrolment-and-pension-contributions-covid-19-guidance-for-employers>.

² *COVID-19 technical guidance for large employers* <www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/automatic-enrolment-and-pension-contributions-covid-19-guidance-for-employers/covid-19-technical-guidance-for-large-employers>.

³ <www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme#work-out-how-much-you-can-claim-for-employers-pension-contributions>.

DC employer consultation relaxations

It may be possible for employers to reduce their employer contributions to the statutory minimum, subject to contractual terms, any collective agreements that apply, and scheme rules.⁴ The Regulator notes that if the scheme is a group person pension (GPP) it is likely that the employer and employee would need to enter into new contracts with the provider.

Pensions legislation requires that employers with 50 or more employees consult with members before making certain 'listed changes'. Reducing the level of employer contributions to a DC scheme is a listed change. The minimum statutory consultation period is 60 days; however, the Regulator has announced that it will not take action against failure to undertake a full consultation provided that all of the following conditions are met:

- the employer has furloughed staff, for whom it is making a CJRS claim;
- the employer is proposing to reduce its contributions in respect of furloughed staff only;
- the reduced contribution rate will only apply during the furlough period, after which it will revert to the usual rate; and
- the employer writes to affected employees and their representatives to describe the intended change and its effects.

The guidance encourages employers to carry out as much consultation as possible even though the above conditions are met. The easement will until 30 June 2020, subject to review.

Salary sacrifices, alternative AE quality requirements & the CJRS

The Regulator has produced some guidance on the implications of the CJRS for employers with salary sacrifice arrangements. It confirms that the reference wage for the CJRS will be based on post-sacrifice pay, and that no sacrifice-related deductions should be made from the CJRS grant. It stresses again that the CJRS does not override employment contracts or scheme rules, which will continue to determine the contributions that employers must actually pay. Notably, it suggests that employers need to base scheme contributions for workers whose wages are reduced to the CJRS grant on a *notional pre-sacrifice pay*, calculated by grossing up the furlough pay in accordance with the arranged sacrifice.

Whilst it may be possible to vary salary sacrifice arrangements, that would not by itself alter the pension scheme's contribution rules. If they need to be changed, consideration should be given to any relevant contractual terms and collective agreements. The Regulator notes that the statutory consultation requirement applies to any proposal to introduce or increase member contributions; it does not say whether its temporary concession regarding the usual 60-day consultation period is equally applicable in this case. Moreover, changes made now will have no effect on the CJRS reference wage, which in many cases will be the amount payable to the employee in the latest salary period ending on or before 19 March 2020.

There are alternative quality requirements that can be used if (as is often the case) a DC scheme's pensionable earnings definition is different from AE qualifying earnings. Crucially, qualifying earnings have a lower boundary, currently £6,240 per annum, whereas pensionable earnings often do not.⁵ The Regulator's worked examples show that in such cases employers will be unable to recover all of their pension contributions via the CJRS. It may be possible to end the current certification period early and amend scheme rules to match the basic AE quality requirement, subject to contractual terms and collective agreements. Again, it is unclear if enforcement of the 60-day consultation requirement will be relaxed in such cases.

The guidance confirms what employers will have realized already: that the support on offer through the Coronavirus Job Retention Scheme (although undoubtedly very welcome) is not a perfect match for their obligations under scheme rules, etc. The potential complications for payroll processes, for example when salary sacrifice is involved, need careful consideration. The Regulator's practicality and openness to emergency contribution-rule changes is to be applauded.

⁴ The Regulator has already outlined the possibilities for deferring contributions to DB schemes <www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-and-investment-covid-19-guidance-for-trustees>.

⁵ They have an upper boundary too, but it is irrelevant when furlough pay is capped at £2,500 per month.