

Automatic enrolment and pension contributions: COVID-19 guidance for employers

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Update: As of June 2020, the Guidance has been updated to recognise that:

- from 1 July 2020, furloughed employees [may work part-time and](#)
- from 1 August 2020, employers will [no longer be able to claim a grant for pension contributions.](#)

In addition, the consultation easement referenced below has been [extended until 30 September 2020](#), as has the request that “scheme providers” (including trustees) report late contribution payments at 150 days late, rather than the usual 90 days (see [7 Days](#)).

Introduction

Just in time for Easter, TPR today published its latest in a series of guidance in response to the global Coronavirus pandemic. This most recent addition is aimed at employers and covers [automatic enrolment and pension contributions](#) (“the Guidance”).

Key points

- The Guidance looks at the interplay between the Government’s Job Retention Scheme (“the Scheme”) and AE, providing much needed clarity.
- Crucially, the Guidance confirms that the maximum pension contribution an employer can claim is 3% of “qualifying earnings” (ie the statutory default mechanism for DC schemes), regardless of whether one of the legislative alternatives is used for satisfying an employer’s AE obligations.
- As required by legislation, TPR expects employers looking to reduce DC contributions to consult affected staff beforehand. However, in limited circumstances, it will not take regulatory action if the minimum timeframe for consulting (60 days) is not met.
- In separate [guidance](#) also issued today, TPR confirms that it is asking “scheme providers” (including trustees) to report late contribution payments at 150 days late, rather than the usual 90 days.
- TPR is also reminding employers of their automatic enrolment duties, both for new employers and those coming up to re-enrolment.
- Further guidance from TPR is promised next week, although on what subject is unclear. Please watch out for a Sackers update.

Background

The Guidance is designed to feed into the Government's central furloughing guidance ([Claim for Wage Costs through the Coronavirus Job Retention Scheme](#)), and to provide much needed clarity on pensions.

Recognising the strain employers are under, TPR promises to "take a proportionate and risk-based approach towards enforcement decisions, in light of these challenging times, with the aim of supporting both employers and savers".

Coronavirus Job Retention Scheme

TPR aims to provide employers with clarity on the following key issues:

Payroll processes and pension contributions

TPR explains that an employer's payroll should be run as normal as its pension obligations, and those of its staff, are not changed by a claim under the Scheme. This means that the usual deductions, such as tax, NICs and pension contributions, should be made from the wages of furloughed staff.

By way of quick reminder, as part of the furloughing package, if an employer makes a claim for a grant (to cover the lower of 80% of a furloughed worker's salary or wage, or £2,500 per month), an employer can also claim the statutory minimum employer pension contribution on those wages. However, the pension contributions which are covered by the Scheme are based on the statutory default AE contributions to a DC scheme, being 3% of banded "qualifying earnings" (earnings between £6,240 and £50,000 for the 2020/21 tax year).

The Guidance notes that there are three alternatives to the DC statutory default described above, the minimum contributions for which depend on the amount of salary or wages which are pensionable. For example, where basic salary is used, an employer minimum contribution of 4% is required and is payable from the first penny of earnings. However, no doubt for the sake of simplicity, the Government seems to be taking a one-size-fits-all approach.

In practice, where an employer has used a different basis for its pension calculations, it must:

- calculate and pay across its contributions as normal, and
- calculate 3% of the qualifying earnings of its furloughed staff as part of the process for making the claim for the total grant under the Scheme.

Employers paying more than the statutory minimum

An employer might pay more than the statutory minimum AE contribution included in the grant under the Scheme because:

- it chooses to pay its furloughed staff more than 80% of their salary, or more than £2,500 a month
- the furloughed worker is an active member of a DB scheme, or a DB member of a hybrid scheme
- as outlined above, its scheme rules may require contributions from the first penny of earnings and/or stipulate a contribution rate of more than 3%, and/or
- under the scheme rules, the employer pays the total contribution whilst staff pay nothing (this will be the case where pension contributions are made using salary sacrifice).

Any contributions in excess of the statutory AE minimum will not be funded by the Scheme, but should

continue to be paid by the employer in accordance with its obligations under the scheme's governing documentation and relevant employment contracts.

Reducing the employer contribution to the statutory minimum

TPR notes that it may be possible for an employer to decrease its contributions to a DC scheme, but that it cannot legally reduce them to below the statutory AE minimum. Subject to this, the Guidance sets out the factors that an employer paying above the statutory minimum should consider when deciding whether or not to make a reduction. These include:

- the terms of employment contracts and whether an individual's agreement would be required for any changes to be made (it suggests employers take legal advice here)
- any agreements with recognised trade unions or other staff representative forums to discuss or notify them of such changes
- whether amendments would be needed to the pension scheme's governing documentation and, if so, who has the power to do this
- whether there is a legal requirement to consult (see below).

Where a scheme amendment power is held by the employer unilaterally, TPR recommends that the employer notifies trustees before a change is made. It also comments that GPP contracts are unlikely to permit reductions. As such, in order to make a change, both the employer and its staff would need to enter into new contracts with the provider.

For TPR's guidance on employer requests to suspend or reduce contributions to a DB scheme, please see our [Alert](#).

Employer consultation requirements

For employers with at least 50 employees, reducing an employer's DC contributions triggers a requirement for statutory consultation for a minimum of 60 days. **TPR states that it will not take regulatory action in respect of a failure to consult for the full 60-day period if all of the following apply:**

- the employer has furloughed staff for whom it is making a claim under the Scheme
- the employer is proposing to reduce its DC contributions in respect of furloughed staff only (for staff who have not been furloughed, the existing pension contribution rate will continue to apply)
- the reduced contribution rate for furloughed staff will only apply during the furlough period, after which time it will revert to the current rate, and
- the employer has written to affected staff and their representatives to describe the intended change, and the effects on the scheme and furloughed staff.

TPR encourages employers "to carry out as much consultation" as they can and states that this "regulatory easement" will be maintained until 30 June 2020, although this date will be reviewed as matters progress.

Finally, TPR confirms that it expects employers to comply with the full consultation requirements when deciding to decrease the employer contribution if all the above criteria have not been met.

Maintaining pension contributions

Leaving aside furloughed staff, TPR addresses a number of questions about the employer's continuing pension obligations, and the implications of certain choices staff may make during the current period of uncertainty.

Do employers have to continue paying pension contributions?

Unless someone asks to opt out of their workplace pension or to reduce their contributions, TPR makes clear that both employers and their staff "must continue to make the contributions required under the scheme at the correct time". Any contributions deducted from wages must also "be paid to the scheme and not used for any other purposes".

That said, TPR notes that staff may be able to choose to reduce their contribution level (scheme rules permitting), opt out (presumably, following recent AE enrolment) or cease active membership altogether. However, TPR cautions employers against encouraging or inducing staff to choose any of these options, as it is unlawful to induce a member to opt out of AE.

There are three distinct categories of worker for AE purposes (eligible jobholders, non-eligible jobholders, and entitled workers), with differing rights and obligations applicable to each. The category of worker into which an individual will fall depends on their age and earnings. Depending on these factors, TPR reminds employers that an individual who chooses any of the above options may need to be put back into the pension scheme at the next re-enrolment date.

What if employers are struggling to make pension contributions?

If an employer thinks it may not be able to pay its pension contributions, it should speak to its "provider" (presumably, the trustees in the case of an occupational pension scheme). Possible options to explore are whether "there is flexibility to change the due date for payment of employer contributions to a future date", or whether the provider can help the employer "plan to pay contributions over a longer period".

In recognition of the challenging environment for employers, TPR has asked "scheme providers" (including trustees) to report late contribution payments to it and scheme members at 150 days late, rather than the usual 90 days set out in its [Code of practice 5 for occupational pension schemes](#) and [Code of practice 6 for personal pension schemes](#). This extra time is intended to give providers "the space to work with employers to bring payments up to date".

Automatic enrolment duties – a reminder from TPR

TPR reminds employers that their AE obligations continue to apply as normal, including their re-enrolment and re-declaration duties. This is the case regardless of whether the employer's staff are still working or are being furloughed as part of the Scheme. It also provides guidance to new employers and employers heading towards re-enrolment:

- New employers - should continue to assess staff and put them into a pension arrangement if they are eligible, although it is possible to postpone the duty to assess new or newly eligible staff (and therefore the requirement to make pension contributions) for up to three months.
- Re-enrolment – TPR notes that many smaller employers are approaching or carrying out their first re-enrolment of staff. It will continue to write to employers with information and support on how to do this.

Re-enrolment does not have to coincide with the third anniversary of the employer's staging date, as it is possible to choose a date up to three months after this. TPR recommends using its re-enrolment date tool for this purpose.

A final word from TPR

TPR knows that these are challenging times and that an employer's business may be struggling with cash flow as a result of the Coronavirus. Where this is the case, it recommends employers explore the different support packages available on the Government's [Business Support website](#).

If you have any questions on any of the above, **please speak to your usual Sackers contact**.

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