The Coronavirus Job Retention Scheme: A Focus on Pensions and Other Salary-Related Benefits at Independent Schools

Under the Government's Coronavirus Job Retention Scheme (JRS), where a school has furloughed employees in accordance with the legislation, it will be able to recoup 80% of employees' pay up to a maximum of £2,500 per employee per month.

In addition, employer National Insurance (NI) contributions and the minimum employer pension contribution of 3% of qualifying earnings required under automatic enrolment (AE) can be claimed. Overall, taking these other costs of employment into account, we believe that a maximum of £2,805 per employee per month will be available between 1st March & 5th April, changing to £2,803 in the 2020/21 financial year. The precise calculation will be confirmed by HMRC in due course.

Employers can choose to top-up wages above the subsidised amount but the Government will not cover the cost of any NI contributions or minimum AE employer pension contributions on this extra pay.

Further information on the JRS is available here: businesssupport.gov.uk/coronavirus-job-retention-scheme/

We do not yet have all the answers in respect of how the JRS will interact with pensions and other salary-related benefits. The following questions and answers are therefore based on our understanding of the various regulations at the date of publication, our interactions with the TPS, and guidance from workplace pensions & benefits providers.

FAQ

If the salaries of furloughed employees are not topped-up on a voluntary basis by the school, should employer pension contributions be based on the reduced salary?

It is our understanding that employer and employee pension contributions should be based on the actual salaries of any furloughed employees during each pay reference period, however the position may be different where a pension salary sacrifice scheme is operated by the school (see below).

We have sought clarification on this specific question from the TPS Policy team, however at the date of publication TPS is in ongoing discussions with the DfE and has been unable to confirm the position with certainty.

It is worth noting that the Local Government Pension Scheme (LGPS) has confirmed that pensionable salary should be the actual salary paid to an employee who is furloughed under the JRS. See the LGPS website for further information: lgpsregs.org/news/covid-FAQs.php

What are 'qualifying earnings' in relation to employer pension contributions?

Qualifying earnings is the name given to a band of earnings that employers can use to calculate contributions for AE purposes. For the 2020/21 tax year this is between £6,240 and £50,000 a year.

If the school's employer pension contributions are higher than the current minimum (3% of qualifying earnings), must it retain this contribution structure?

In many cases, schools will be contributing more than the minimum required under the AE regulations and the existing pension contribution structure should be retained.

Subject to contractual employment terms (and whether employee consent to any reduction is required), agreements with recognised unions or staff representative bodies, and the specific pension scheme structure and rules, it may in certain circumstances be possible to reduce employer pension contributions to the AE minimum.

A reduction in employer contributions also requires a 60-day pension consultation, if at least 50 employees are members of the scheme, although due to the current situation TPR has agreed to a regulatory easement until the 30th June 2020, subject to various criteria being met.

We would recommend taking legal advice if the school intends to seek agreement with employees or unions to change the basis on which employer and employee pension contributions are calculated.

In respect of TPS, the employer contribution of 23.68% is not variable by the employer whilst it remains an accepted school under the TPS Regulations.

Does the school need to make pension contributions if furloughed employees choose to opt out of the school's workplace pension scheme?

If furloughed employees elect to opt out of their workplace pension scheme then the employer would no longer be required to contribute. Schools may make staff aware of this option, however they must not do anything with the sole or main purpose of inducing employees to opt out of their workplace pension.

Any communication should be factual and balanced. For example, the school may believe that some employees might struggle financially due to a reduction in pay, but should also highlight the fact that if employees opt out they would lose the benefit of the employer pension contribution too.

Any member of staff who opts out must be put back into the pension scheme at the next re-enrolment date provided they meet the criteria for re-enrolment and opted out more than 12 months before the re-enrolment date. If they have opted out or ceased active membership within the 12 months before the re-enrolment date the school can choose to re-enrol them, but is not required to do so.

If a school operates a salary sacrifice scheme for its defined contribution (DC) workplace pension, do employer pension contributions need to be maintained for furloughed employees?

Employers are likely to be obliged to continue with the same level of pension contributions under a pension salary sacrifice arrangement, regardless of a reduction in the employee's pay during the furlough period, unless expressly agreed otherwise with the furloughed employees.

From the employees' perspective, a pension salary sacrifice scheme may therefore be beneficial, as pension contributions are generally unaffected by a reduction in salary during the furlough period. It's worth noting, however, that the JRS payment calculations will be based on actual (ie. post-sacrifice) salary on the 28th February 2020 and, as a result, some employees will receive a lower income whilst furloughed.

Is the pandemic a "life event", meaning that schools could allow employees to vary other benefits paid for via a salary sacrifice arrangement?

Yes, the Government's guidance confirms that Coronavirus can be considered as a "life event", meaning employers can allow employees to make changes to their salary sacrifice arrangements.

What is the impact of a lower salary on furloughed employees' pension benefits?

For members of DC pensions schemes, a lower salary will normally result in reduced pension contributions and - all other things being equal - a somewhat smaller pension fund at retirement.

The position for members of TPS is linked to the outstanding question on the definition of pensionable salary for any members who are furloughed. If pensionable salary is defined as the actual salary received during the furlough period (as we anticipate) then TPS pension benefits are likely to be reduced. This would be the case for career average scheme (CARE) benefits and potentially also for any final salary scheme benefits, depending on whether the furlough period is included in the final salary assessment at retirement (or the date at which the member leaves the scheme, if earlier).

Could employees choose to make higher contributions in order to mitigate any potential reduction in pensions benefits?

Workplace DC pension schemes typically allow employees to make higher contributions, if desired.

TPS offers Additional Pension Benefit and (for members of the career average scheme) a Faster Accrual option.

What is the impact of a lower salary on furloughed employees' other salary-related benefits such as group life insurance and income protection policies?

In many cases, it will be possible to retain the level of any group life and income protection cover, based on the pre-furlough contractual pay, but terms and conditions vary and confirmation should be sought from each insurer.

Subject to confirmation from TPS, ancillary benefits may be reduced if a claim were to be made during the furlough period. TPS ancillary benefits include death in service, ill-health and dependants' pensions.

Can employer pension contributions be deferred if a school is under severe financial pressure due to the coronavirus pandemic?

TPR has confirmed that employers' duties in respect of pension contributions are unchanged, despite the current economic situation. Schools that have concerns about their ability to make pension contributions should contact the pension scheme provider in the first instance to explore whether there is flexibility to change the due date for payment of employer contributions.

Schools may also contact TPR to discuss their situation and agree a way forward. Where an employer falls into arrears, the current rules require missed contributions to be made up at a future date. Normally a recovery plan would be agreed with TPR.

Pension schemes have a duty to inform TPR when pension contributions have been in arrears for 90 days. TPR have relaxed that obligation in light of the current crisis and schemes will now only be required to notify TPR of arrears after a period of 150 days.

If a school is consulting with staff on leaving Teachers' Pensions, can the consultation continue whilst staff are working remotely?

Although remote working may create some practical issues in terms of effective communication between the various parties, our understanding is that there is no reason why the consultation needs to be put on hold.

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