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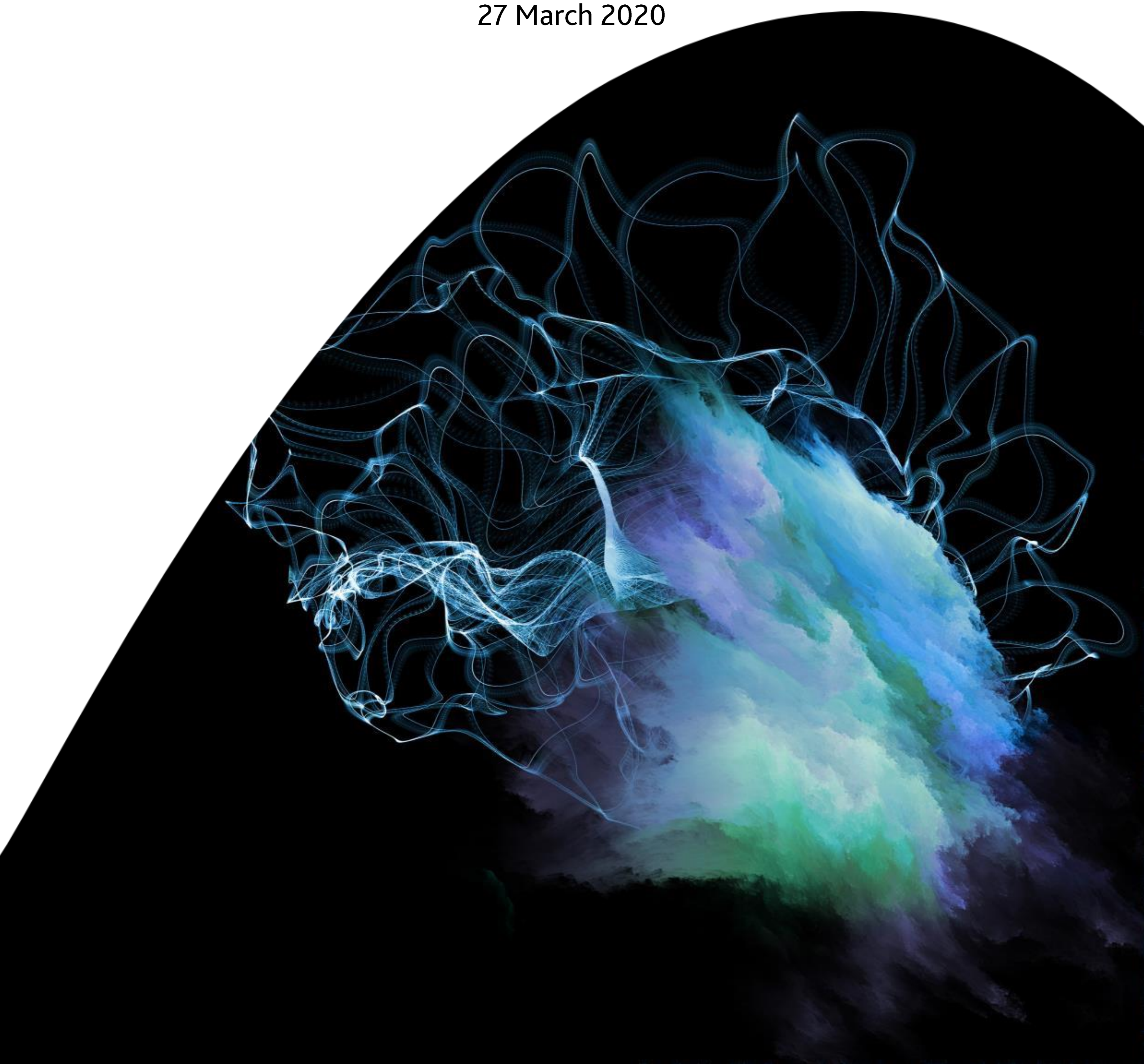
Pensions Update

Coronavirus Job Retention Scheme & Furloughed Workers

27 March 2020



Pensions Update

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Coronavirus Job Retention Scheme

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. It should be up and running by the end of April. Before then, HMRC will issue more guidance on how employers should calculate their claims for the grant, and in particular pension contributions.

The scheme will entail classifying staff as "furloughed workers" – that is employees temporarily away from work due to the exceptional economic conditions. It means staff can be kept on the payroll, rather than being laid off. The Coronavirus Job Retention Scheme is not available if an employee is still working, but on reduced hours or for reduced pay.

The scheme is open to all UK employers that had created and started a PAYE payroll scheme on 28 February 2020.

Separately from the job retention scheme, the government has passed legislation to allow workers to take emergency volunteer leave. We cover this at the end of this update.

Key features

Employers can use a portal to claim a government grant which will cover:

- 80% of regular monthly wage costs, up to £2,500 a month; PLUS
- Employer National Insurance Contributions on that subsidised wage; AND
- Minimum automatic enrolment employer pension contributions on that subsidised wage.

Employers can fund the difference between this payment and the employee's full wages, but do not have to in order to benefit from the scheme.

Clarity for auto-enrolment

The further detail provided in an HMRC update of 26 March 2020 is significant. It is now confirmed that employers will get a helping hand with auto-enrolment pension contributions. The very strong implication is that auto-enrolment will **not** be "switched off" for the period of disruption.

Are employer pension contributions covered?

Yes – buy only based on the subsidised wage covered by the government grant.

However, it is important to note that the grant covers only the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).

It is not yet clear whether employers are automatically relieved of contribution obligations baked into scheme rules and employment contracts (which may not be determined by reference to the subsidised wage or may exceed the 3% minimum required to be paid by employers).

The grant is focused on DC contributions. This may prove a challenge to those who still have ongoing DB accrual, where the cost of accrual is usually greater.

What elements of pensionable pay will be covered?

Fees, commission and bonuses should not be included in the calculation of salary that is covered by the government grant. However, commission and bonuses feature in the statutory definition of qualifying earnings which is used in automatic enrolment for DC employees:

- to determine eligibility for scheme membership; and
- to determine pension contribution amounts (unless these are based on "basic pay" or some other definition of pensionable pay which expressly excludes them).

As mentioned above, we have been promised further guidance that should provide additional clarity.

Active members of a defined benefit scheme could experience a fall in the amount of pension eventually payable both because of a possible drop in the length of pensionable service and in the amount used for calculating final pensionable salary.

What about employee pension contributions?

Employee contributions are deducted from a worker's pay by the employer, but are not borne by the employer as a cost. These are **not** covered by the government grant. Employees will pay pension contributions under the terms of the scheme.

Employee options

Some of the workforce may experience hardship in the coming months. Any employee may have the option of leaving a pension scheme and then opting back in when life and pay return to normal – though this is not always on the same terms.

Employees can also remain in active membership but on a non-contributory basis if scheme rules (and employment contract terms) permit.

It is important that employees understand the full implications of this, in particular for dependants' benefits.

Legal/contractual terms

It is important to consider how the Job Retention Scheme, and any other changes, interact with the scheme rules and relevant employment contracts.

For example, rules of DC schemes may require the continued payment of "full" contributions even though the government grant covers only minimum contributions calculated by reference to subsidised wages under the Job Retention Scheme.

If an employer intends to make contributions only to the extent they are covered by the grant, this may technically trigger 60 day consultation with the workforce under pensions legislation. Employers may need to take a view on compliance with this, in discussion with their employees.

Temporary absence provisions in scheme rules should be checked. They may have an impact on payment of contributions, and on whether and how active members of DB schemes continue to accrue pensionable service.

Salary sacrifice

Under salary sacrifice, the employee gives up a portion of salary in exchange for the employer paying a corresponding amount into the pension scheme. As a result of the reduction in pay, no deduction is made from the employee's pay for pension contribution purposes.

In these cases, DC employers pay the full (generally) 8% statutory minimum auto-enrolment pension contribution. However, the government grant only covers the **minimum** statutory employer contribution of 3%. So employers would still be liable for the remainder under the terms of the salary sacrifice arrangement entered into with employees unless other arrangements are made.

Death benefits

Employers can also be required to bear the cost of death in service benefits. These are typically provided by way of a lump sum based on a multiple of salary. Whilst these too represent one of the costs of employment, there is no suggestion now that they will be covered by the government grant. For one thing, the grant is more obviously designed to compensate for lost wages while workers remain on the payroll. For another, death benefit lump sums can be very high and would put a strain on the system. Where these lump sums are insured, trustees and employers should check whether furloughed workers will be covered at all and, if so, for the correct amount.

Regardless of funding, it is important that employees understand any changes in the nature of their cover, either due to a reduction in earnings or to a change in their employment status. Trustees and employers will need to communicate appropriately once the impact on employees' benefits is clear.

Emergency Volunteer Leave

Separately from the job retention scheme, the government has passed legislation to allow workers to take emergency volunteer leave to help in health or social care. This period of time can be in blocks of two, three or four consecutive weeks' statutory unpaid leave during a single volunteering period. The volunteering period will initially be for 16 weeks, but the government can extend this by further 16 week periods. A volunteer may not be absent from work more than once during any volunteering period. There will be a UK-wide compensation fund to cover loss of earnings and expenses incurred, at a flat rate, for those who volunteer.

A worker on emergency volunteer leave has a right to return to work with the same terms and rights (including pension rights) as if he or she had not been absent. Pension schemes have to treat the time such workers are absent as if they were not absent. In other words, these workers are treated for pensions purposes in a similar way to those on paid maternity leave.