



Briefing note - 21st April 2020

Furloughing and pension provision: what we know so far

The current COVID-19 crisis has thrown up many issues around salaries and employee benefits and we are helping our clients through the situation in various ways.

Many employers have had to make the difficult decision to use the government's Coronavirus Job Retention Scheme (CJRS) and place staff on furlough. For furloughed employees, the government will provide a grant to pay (broadly) 80% of their normal wages (up to £2,500 per month) as well as the cost of the employer's national insurance contributions and statutory minimum pension contributions (based on the subsidised wage).

Salary sacrifice

One common question that has been raised is how furloughing works with payment of contributions through salary sacrifice.

Below is our latest understanding, however, please note that the situation is subject to change with further guidance coming out from government on a regular basis. If more clarity is provided then we will update this note accordingly, so please do keep checking back into our dedicated **Coronavirus Resource Centre** online for more information.

What we know

If an employee is paying pension contributions through salary sacrifice, the employee gives up part of their salary for an additional employer contribution equal to the amount of salary given up. The post-sacrifice salary becomes their

contractual entitlement and therefore, under the CJRS, the grant would only cover 80% of the post-sacrifice salary. The grant must be paid in full as furlough pay and cannot be reduced by the salary sacrifice payment.

However, as the salary sacrifice agreement is part of the employee's contract as their inclusion in it took place through a variation in their terms and conditions of employment, the employer's contractual obligations still apply, meaning they still have to meet the cost of the additional employer contribution.

So, what does this mean for employers where an employee is paying contributions through salary sacrifice? They are left with two options:

1. the employer continues to pay the employee's salary sacrifice contributions but cannot reclaim this through the CJRS; or
2. the employee ceases to participate in salary sacrifice.

Option 1 : How does salary sacrifice work with the CJRS?

As outlined above, the employee's furlough pay cannot be reduced by the salary sacrifice. The employer nonetheless is required to continue to pay this as it is a contractual employer contribution.

However, unlike other scenarios where an employee's pay is temporarily reduced (such as during maternity and paternity leave), the employer can use the furlough pay for the purpose of calculating pension contributions

(unless the employee's contract specifies otherwise or the employer agrees to top up the furlough pay – legal advice should be sought for clarity on contractual obligations). We would encourage clients to confirm the basis for pension contribution calculations (alongside pay and other benefits whilst on furlough) within the furlough agreement, and the latest guidance from The Pensions Regulator (TPR) helpfully lays that out.

Below, we have set out worked examples of how this will work in practice, based on an employee being paid in line with the CJRS grant.

Where we have calculated furlough pay, we have simply applied the 80% rule to basic salary. Please refer to the government guidance on calculating this amount. All examples are based on the 2019/20 tax year.

Example 1 – pensionable pay is basic salary

- Employer contribution of 5% of pensionable pay
- Employee has agreed to sacrifice 5% of pensionable pay

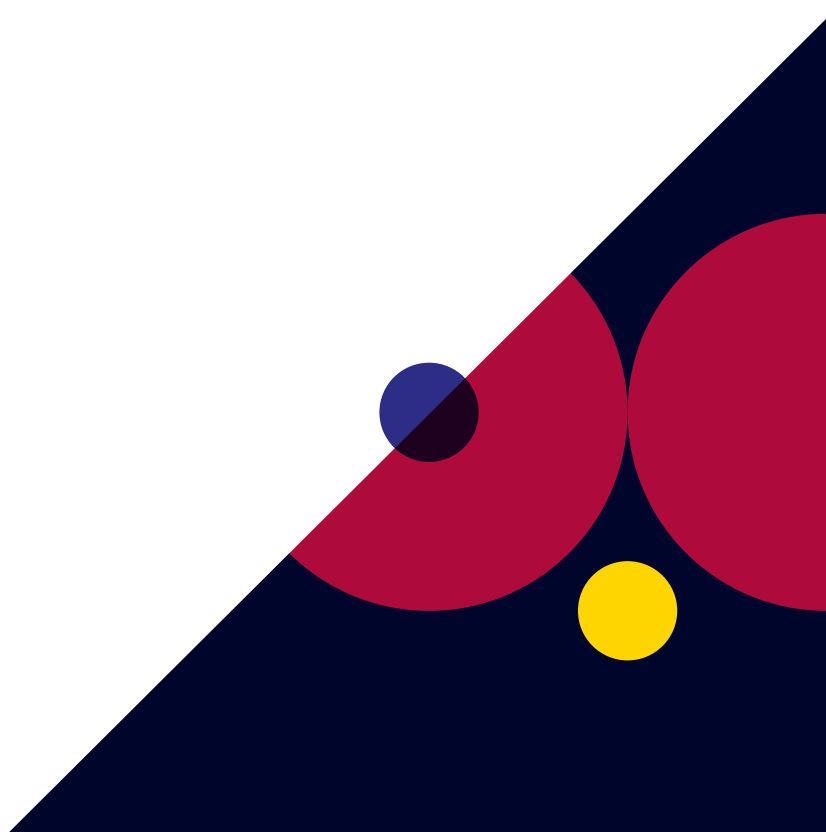
Example 1	Employee 1	Employee 2	Note
Employee basic salary pre-salary sacrifice (reference salary)	£25,000.00	£60,000.00	
Employee basic salary post-salary sacrifice	£23,750.00	£57,000.00	
Employee furlough salary	£19,000.00	£30,000.00	Actual salary for employee while on furlough (cannot be reduced for sal sac)
Employee notional pre-salary sacrifice pay	£20,000.00	£31,578.95	This is the employee's notional furloughed pay derived from the actual furlough pay plus the notional employee contribution. Calculated as: Furlough pay / (1 - employee sal sac)
Employer contribution	£1,000.00	£1,578.95	
Salary sacrifice contribution (to be paid by employer)	£1,000.00	£1,578.95	
Employee contribution reclaim through CJRS	£0.00	£0.00	
Employer contribution reclaim through CJRS	£385.92	£715.92	3% of (furlough pay - £6,136)
Net cost to employer	£1,614.08	£2,441.97	



Example 2 – pensionable pay is qualifying earnings

- Employer contribution of 5% of pensionable pay
- Employee has agreed to sacrifice 5% of pensionable pay

Example 2	Employee 1	Employee 2	Note
Employee basic salary pre-salary sacrifice (reference salary)	£25,000.00	£60,000.00	
Employee basic salary post-salary sacrifice	£24,056.80	£57,306.80	
Employee furlough salary	£19,245.44	£30,000.00	Actual salary for employee while on furlough (cannot be reduced for sal sac)
Employee notional pre-salary sacrifice pay	£19,935.41	£31,256.00	This is the furlough pay plus the employee's salary that could be considered as the notional salary sacrifice. Calculated as: (Furlough pay - employee sal sac x the lower limit of qualifying earnings) / (1 - employee sal sac)
Employer contribution	£689.97	£1,256.00	
Salary sacrifice contribution (to be paid by employer)	£689.97	£1,256.00	
Employee contribution reclaim through CJRS	£0.00	£0.00	
Employer contribution reclaim through CJRS	£393.28	£715.92	3% of (furlough pay - £6,136)
Net cost to employer	£986.66	£1,796.08	



Example 3 – Statutory minimum contributions based on qualifying earnings

- Employer contribution of 3% of pensionable pay
- Employee has agreed to sacrifice 5% of pensionable pay

Example 3	Employee 1	Employee 2	Note
Employee basic salary pre-salary sacrifice (reference salary)	£25,000.00	£60,000.00	
Employee basic salary post-salary sacrifice	£24,056.80	£57,306.80	
Employee furlough salary	£19,245.44	£30,000.00	Actual salary for employee while on furlough (cannot be reduced for sal sac)
Employee notional pre-salary sacrifice pay	£19,935.41	£31,256.00	This is the furlough pay plus the employee's salary that could be considered as the notional salary sacrifice. Calculated as: (Furlough pay - employee sal sac x the lower limit of qualifying earnings) / (1 - employee sal sac)
Employer contribution	£413.98	£753.60	
Salary sacrifice contribution (to be paid by employer)	£689.97	£1,256.00	
Employee contribution reclaim through CJRS	£0.00	£0.00	
Employer contribution reclaim through CJRS	£393.28	£715.92	3% of (furlough pay - £6,136)
Net cost to employer	£710.67	£1,293.68	

As this example illustrates, although the employer is utilising the statutory minimum contribution basis, the employer's contributions must be based on the notional pre-sacrifice salary. These are higher than the contributions that can be reclaimed through the CJRS, which are based on actual furlough pay.

Option 2 : How can the employer remove staff from salary sacrifice?

Removing employees from a salary sacrifice arrangement can help manage the employer's cost at this time, However for the employee this would be seen as a negative as their National Insurance contribution would increase and, if they remained in the salary sacrifice arrangement, the employer would be required to meet the employee's share of the contributions.

This is a contractual law issue and so not an area where we, as pensions advisers, can give a firm answer. It appears that there could be three options employers might consider:

1. **Suspending the salary sacrifice arrangement.** We would expect a salary sacrifice arrangement to be set up on the basis that the employer reserves the right to withdraw it/amend it at any time. Therefore, if an employer is furloughing the entire workforce, utilising this power would allow them to suspend the salary sacrifice scheme. However, this is unlikely to be possible where they are only furloughing some staff unless they wish to suspend salary sacrifice for those that continue to be in active employment as well. Employers should check the terms of their salary sacrifice arrangement to ensure that this option is available.
2. **Employee agreement as part of process of putting staff on furlough.** This seems to be the most straightforward approach, however we would encourage employers to ensure that the impact of exiting salary sacrifice is clear to the furloughed employee.

3. Formal contractual change for affected staff.

An employer could make a change through an update to the employee's terms and conditions. However, this would likely be a more time consuming process and the employer must work closely with their legal adviser if this approach is taken.

It is clear that this is a complicated area of employment law and so we would recommend you engage your legal adviser. However, from a practical standpoint options 1) and 2) are certainly the cleanest. Indeed, certain legal advisers (such as DWF) have suggested that employers may wish to use the furlough agreement to negotiate benefits during the furlough period. Many have already included flexibility in their furlough agreements in order to do just that as the question of benefits was not clear at all at the outset of the scheme.

Changing the pension contribution structure

Given the challenges around affordability and complexity of pension contributions for staff on furlough, TPR has said that it will also not take regulatory action for failure to consult for 60 days on changes to contributions, normally applicable to employers with at least 50 employees under employment law. This easement in regulatory policy will be maintained until 30 June 2020.

TPR states that this is permissible in the following circumstances where employers:

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

TPR also make clear it would also encourage employers to carry out as much consultation as they reasonably can.

This note is based on our understanding of the following:

- The government guidance on CJRS, last updated as at 17 April 2020
<https://www.gov.uk/government/publications/coronavirus-job-retention-scheme-step-by-step-guide-for-employers>
- TPR's guidance on DC pension contributions, last updated as at 17 April 2020.
<https://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/automatic-enrolment-and-pension-contributions-covid-19-guidance-for-employers-2020>
- TPR's technical guidance for large employers
<https://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>

and is subject to change if the guidance is altered. It should not be relied on as advice.

For more information or to discuss any of the issues raised in this Briefing Note please get in touch with your usual Punter Southall Aspire contact or use the contact details below.

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[Click here to view our Coronavirus Resource Centre](#)

Ref 344 to 30/6/20.

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