

# Sixty second summary

## COVID-19: pensions developments as at 30 March 2020

The *Coronavirus Act 2020*, which was fast-tracked through Parliament and received Royal Assent in a break-neck six days, creates a new category of statutory leave for volunteers, and enables retired NHS workers to return to service or increase their commitments without having their pensions in payment reduced.<sup>1</sup> Meanwhile, the Pensions Regulator indicated how it expects trustees, employers and administrators to behave, with special guidance on DC investment, and DB sponsors that are feeling the pinch.<sup>2</sup> Elsewhere, the Government outlined the auto-enrolment implications of its Coronavirus Job Retention Scheme.<sup>3</sup>

### Emergency legislation

The *Coronavirus Act 2020* temporarily gives the authorities broad-ranging powers to enable them to respond to the epidemic. Many of its provisions can be suspended and reactivated as required, and come with an expiry date, though with numerous exceptions and the ability to defer their scheduled demise.

It includes provision for a temporary new type of unpaid statutory leave, known as '*emergency volunteering leave*'. Details of eligibility and procedure are beyond our remit, but from a pensions perspective the implications will be similar to those of the various forms of family leave. Employer contributions (in the case of money purchase arrangements) and benefit accrual (in DB contexts) must continue as if the member were working normally, whilst member contributions are based on any actual pay from the employer (there will be no statutory minimum pay for volunteers; instead, there will be a compensation fund from which they will be able to claim lost earnings, plus travel and subsistence expenses). The provisions in question require secondary legislation to bring them into force.

The Act also contains sections that will permit health workers who are in receipt of NHS pensions (whether because they have retired altogether, or just down-shifted to part-time work) to return to work or step up their commitments without having those pensions suspended or reduced (a practice known in the public-sector pensions world as 'abatement').

### The Pensions Regulator

The Regulator has asked the industry to prioritize continuity of benefit payments and contributions, remain alert to pension scams, and to enable members to make good decisions. For trustees, it stresses the importance of risk management and business continuity planning. It advises them to hold discussions with their administrators and other service providers to determine how they will cope with spikes in workload or staff absences (or both), and to give them clear instruction about where their priorities ought to lie (paying pensions and death benefits, processing retirements).

<sup>1</sup> <[www.legislation.gov.uk/ukpga/2020/7/enacted](http://www.legislation.gov.uk/ukpga/2020/7/enacted)> (see section 8 and paragraph 7 of Schedule 7, and sections 45 to 47).

<sup>2</sup> COVID-19: an update for trustees, employers and administrators <[www.thepensionsregulator.gov.uk/en/covid-19-an-update-for-trustees-employers-and-administrators](http://www.thepensionsregulator.gov.uk/en/covid-19-an-update-for-trustees-employers-and-administrators)>, Guidance for DB scheme trustees whose sponsoring employers are in corporate distress <[www.thepensionsregulator.gov.uk/en/covid-19-an-update-for-trustees-employers-and-administrators/guidance-for-db-scheme-trustees-whose-sponsoring-employers-are-in-corporate-distress](http://www.thepensionsregulator.gov.uk/en/covid-19-an-update-for-trustees-employers-and-administrators/guidance-for-db-scheme-trustees-whose-sponsoring-employers-are-in-corporate-distress)>, DB scheme funding and investment: COVID-19 guidance for trustees <[www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-and-investment-covid-19-guidance-for-trustees](http://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-and-investment-covid-19-guidance-for-trustees)>, DB scheme funding: COVID-19 guidance for employers <[www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-covid-19-guidance-for-employers](http://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/db-scheme-funding-covid-19-guidance-for-employers)>, DC investment: COVID-19 guidance for trustees <[www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/dc-investment-and-transfer-values-covid-19-guidance-for-trustees](http://www.thepensionsregulator.gov.uk/en/covid-19-coronavirus-what-you-need-to-consider/dc-investment-and-transfer-values-covid-19-guidance-for-trustees)>.

<sup>3</sup> Claim for your employee's wages through the Coronavirus Job Retention Scheme <[www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme](http://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme)>.

### Defined benefit schemes

Whilst noting that it is not authorizing, encouraging or compelling trustees to take any particular course of action, and that it expects them to do what is right for members in the circumstances, the Regulator has indicated that (subject to suitable legal and actuarial advice):

- those who are close to finalizing valuations need not revisit their assumptions, or take into account events after the valuation date (except when reflecting on the employer's ability to pay any agreed deficit-recovery contributions);
- there will be no enforcement action if valuation documents are submitted (up to three months) late; and
- where appropriate, trustees can allow employers to reduce or suspend DRCs, temporarily.

Suspensions should be for as short a period as is possible (no more than three months) unless trustees have sufficient covenant information and are presented with a good business case to support a longer-term relaxation (for example where refusal would restrict the assistance on offer from other creditors), and ideally with additional protections for the scheme put in place. As a condition of the trustees' agreement the employer should make a legally binding commitment to suspend dividends and other forms of 'value leakage'. The deferred contributions should generally be paid before the end of the existing recovery plan period. Reasonable requests for suspension or reduction of future-service contributions should also be accommodated, but there may be scheme-specific considerations.

On the investment side, the Regulator counsels trustees to focus attention on their cashflows, risk management, and the continued appropriateness of their current investment arrangements and governance structures.

No enforcement action will be taken if transfer activity (quotations and payments) is suspended for the next three months whilst trustees review the terms on offer or prioritize other administrative activity (such as benefit payments).

### Defined contribution (DC) schemes

The Regulator asks DC trustees to be alert to the possibility of members making bad decisions (e.g. crystallizing losses or falling prey to scams). They should consider the continued appropriateness of their portfolios, any investment decisions that are scheduled to take effect, and their governance structures,

### Regulatory activities

The Regulator is halting its regulatory initiatives, and will be contacting participants with more information. It will, however, be maintaining one-to-one supervision activities. It is also delaying publication of various documents, including the planned consultation on the consolidation of its Codes of Practice. The timing of the current consultation on revision of the DB funding Code is to be reviewed.

## Her Majesty's Revenue and Customs (HMRC)

Guidance from HMRC on claims for wage costs under the Coronavirus Job Retention Scheme touches on automatic-enrolment (AE) issues. In summary, for at least three months (starting on 1 March 2020) employers will be able to claim back part (the lesser of 80 per cent of regular salary, or £2,500 per month) of the wages of *'furloughed'* employees, plus the Employer National Insurance contributions and minimum AE employer contributions associated with the claimed wages. Any additional pay above the claimable amount and the contributions thereon will not be covered; nor will AE contributions above the minimum 3 per cent of qualifying earnings.

This is a brief overview of numerous developments. It is intended to alert readers quickly to the various pensions-related responses to the coronavirus pandemic, rather than to provide an in-depth (or even adequate) discussion of any of them. We will issue further updates and follow up with more detail on specific subjects as appropriate. In the meantime, please contact your usual Hymans Robertson consultant to discuss any particular concerns.