



Legal Services

FINANCIAL SERVICES



ON THE SCALES 1 OF 2019

Guidance Note 8 of 2018: Guidance on the application of Default Regulations

The Financial Sector Conduct Authority (“Authority”) has published Guidance Notice No. 8 of 2018 (“Guidance Notice”) on the application of the default regulations to funds. The Guidance Notice provides retirement funds with clarity as the Authority has received several enquiries on the application of the default regulations.

As a reminder, Regulation 37 is about default investment portfolios, Regulation 38 deals with default preservation and portability, and Regulation 39 contains the requirements for an annuity strategy.

Summary

- Default regulations are effective from 01 March 2019 and all existing default arrangements must fully align to the default regulations by 01 March 2019.
- The Authority intends examining funds compliance with the default regulations from 01 March 2019.
- Default investment portfolios must fully comply with Regulation 37(1) and there will be no exemptions from compliance in this regard.
- Funds have been provided with a template for paid- up certificates.

- The Authority proposes that retirement benefit counselling should be done within 6 months of date of retirement of a member. However, the default regulations do not prescribe a maximum time period.
- Administrative fees and charges for paid-up members should be lower than in-service members.
- Funds may apply for exemptions from the application of some of the provisions of the default regulations.

Summary of application of the default regulations to funds

	PENSION FUND	PROVIDENT FUND	RETIREMENT ANNUITY FUND	BENEFICIARY FUND	PENSION PRESERVATION FUND	PROVIDENT PRESERVATION FUND	FUNDS IN VOLUNTARY LIQUIDATION
REG 37¹	Yes	Yes	No	No	No	No	No
REG 38²	Yes	Yes	No	No	No	No	No
REG 39	Yes	No, unless the rules enable a member to elect an annuity	Yes	No	Yes	No, unless the rules enable a member to elect an annuity	No

Default Investment Portfolios

A participating employer may select a default investment portfolio applicable to its employees who are members of the fund. This is useful for umbrella funds. A participating employer may only select a default investment portfolio from the available choices determined by the board of the fund.

The word 'member' defined in relation to a default investment portfolio can mean a category of members.

If a fund has one investment portfolio in terms of its investment policy statement, that portfolio will be considered the default investment portfolio and must comply with Regulation 37.

¹ In relation to funds with defined contribution categories to which members belong as a condition of employment

² In relation to funds which members belong as a condition of employment

Default investment portfolios which do not comply with Regulation 37 will no longer qualify as a default investment portfolio from 01 March 2019. Members must be moved to a default investment portfolio which is compliant with Regulation 37 by 01 March 2019.

Communication to members must be done, informing them there is no grandfathering of a fund's non-compliant default investment portfolios from 01 March 2019.

The fund must communicate to members at least once a year about the asset composition, performance of the default investment portfolio/s compared to appropriate benchmarks and top 10 holdings by value and fund returns from current and at least two previous financial years.

Paid up membership certificates

The Authority has provided a template for paid-up certificates. Paid-up certificates provided to members should resemble the template as far as possible.

Retirement benefits counselling

Retirement benefits counselling may be done in person or in writing and funds must keep records of the counselling which has been provided. A person appointed by a fund to provide retirement benefits counselling does not have to be a financial advisor. However, the trustees must ensure that the person appointed is suitably qualified and experienced.

Members should be informed that retirement benefits counselling does not include advice, even on tax matters. Should the retirement benefits counselling be done in conjunction with advice, including tax advice, then the person providing the advice must be a registered financial advisor or tax practitioner.

Disclosures and explanations must be provided to members receiving retirement benefits counselling in a clear, understandable language, including risks, costs, fees, and charges of all items mentioned in the retirement benefits counselling.

Insofar as retirees are concerned, the Authority recommends that retirement benefits counselling must be done no more than 6 months before a member's retirement. A fund must ensure that the information provided is still relevant and appropriate at retirement age. Retirees must be informed about the fund's annuity strategy and any other options available to them.

The default regulations do not prescribe a maximum time period. Funds may provide members with access to retirement benefits counselling well before their retirement from the fund. Funds can, for example, provide members with continuous access to retirement benefits counselling, which is possible

through relevant written communication being made available. Alternatively, funds could make access to retirement benefits counselling available to retirees at specific time periods, for example: 5 years, 1 year and 3 months before their normal retirement age. But funds must ensure that retirees are provided with access to retirement benefits counselling not less than 3 months before their normal retirement age.

Converting paid-up benefits from defined benefit amounts to a defined contribution component

Funds with defined benefit categories have been exempted from converting paid-up benefits from defined benefit amounts to a defined contribution component but may do so if they wish.

Paid-up members

Board of funds must ensure that administrative fees and charges for paid-up members are fair and reasonable. Paid-up members' fees should be less than in-service members as there are no monthly contributions and schedules to administer. The deduction of administration fees from paid-up members does not constitute a reduction of a benefit. Trustees must put measures in place to make sure paid-up benefits are not eroded by fund expenses.

The investment fees charged for paid-up and in-service members must be calculated on the same basis. A paid-up member may transfer a benefit from another fund at any stage at no cost except for section 14 fees payable to the Authority. Section 37C of the Pension Funds Act is applicable to paid-up members.

In time, the Authority will establish and maintain a database of all paid up certificates which funds must update accurately and timeously.

Annuity strategies

Beneficiary funds do not need to comply with Regulation 39. Provident funds and provident preservation funds are not expected to comply with Regulation 39 for the time being, unless the rules enable a member to elect an annuity.

In a living annuity, there can be one investment portfolio offered, up to a maximum of four investment portfolios.

Exemptions

When a fund applies for an exemption the fund must specify the Regulation they would like exemption from. The application for exemption must be submitted via the Authority's online system using the form provided in this Guidance Notice. Our view is that funds which are in a closing down process (but are not in liquidation) have to apply for an exemption from the default regulations using the template exemption application form.

Funds may submit supporting documents along with the initial application as the Authority may request supporting documents to substantiate the application. The Authority may grant an exemption unless the granting of the exemption would be contrary to public interest or may prejudice the achievement of the objectives of the default regulations. Exemptions will be granted in writing and published on the Authority's website.

Comments: funds must ensure that all existing default arrangements are fully aligned to the default regulations by 01 March 2019. The Authority will examine funds' compliance with the default regulations from 01 March 2019.

If you need more information, please contact your consultant.
