



Financial Sector
Conduct Authority

PFA GUIDANCE NOTICE NO. 8 OF 2018

PENSION FUNDS ACT, NO. 24 OF 1956

**GUIDANCE ON THE APPLICATION OF 'DEFAULT REGULATIONS' CONTAINED IN
REGULATIONS 37, 38, 39 AND 40**

1. DEFINITIONS

In this guidance notice:

“**Act**” means the Pension Funds Act, 1956 (Act 24 of 1956);

“**Authority**” means the Financial Sector Conduct Authority as defined in section 1(1) of the FSR Act;

“**Default Regulations**” means regulations 37, 38, 39 and 40;

“**FSR Act**” means the Financial Sector Regulation Act, 2017 (Act 9 of 2017);

“**regulations**” means the regulations made in terms of section 36 of the Act.

Words defined in the Act, regulations or the FSR Act bear the same meaning in this guidance notice unless the context indicates otherwise.

2. BACKGROUND

The Minister of Finance issued the Default Regulations with effect from 1 September 2017. The Default Regulations prescribe conditions for default investment portfolios, default preservation and portability, and annuity strategies for funds. All new default

arrangements that come into operation on or after 1 September 2017 must comply with the requirements set out in the Default Regulations. Existing default arrangements must be fully aligned to the Default Regulations by 1 March 2019 and the Authority will examine funds' compliance with the Default Regulations from 1 March 2019.

3. PURPOSE

This guidance notice is issued by the Authority in terms of section 141 of the FSR Act, in order to provide guidance on the application of the default regulations by retirement funds. The Authority has received several enquiries on the application of the Default Regulations and consequently considers it prudent to issue this guidance in order to further explain and clarify certain aspects.

4. APPLICATION OF THE DEFAULT REGULATIONS

4.1. Summary of application of Default Regulations to funds

In general terms, not taking into account any exemptions that may be granted either specifically or generally to funds, the following table summarises the 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 37 ¹	Yes	Yes	No	No	No	No	No
REG 38 ²	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

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

4.2. Default investment portfolios

- (a) Provided the rules permit, funds may allow a participating employer to choose the default investment portfolio applicable to members employed by that particular participating employer because it is consistent with paragraph (b)(iv) of the definition of “default investment portfolio”. Notwithstanding this, it bears re-iterating that the ultimate decision regarding the available choices of investment portfolios from which an employer may select and the appropriateness of the default investment portfolio which may be chosen lies with the board of the fund.
- (b) The reference to “member” in paragraph (b)(iv) of the definition of “default investment portfolio” includes a reference to a category of members.
- (c) In the event of there being only one investment portfolio in which retirement funding contributions of members are invested in terms of a fund’s investment policy statement, then that investment portfolio is considered as the default investment portfolio and it must comply with the provisions of Regulation 37.
- (d) An existing default investment portfolio which does not comply with the provisions of Regulation 37(1) will no longer qualify as the fund’s default investment portfolio from 1 March 2019. In this regard, funds must communicate with their members and move members from the current default investment portfolio to the new default investment portfolio which complies with Regulation 37(1) by no later than 1 March 2019. There is no ‘grandfathering’ of a fund’s non-compliant default investment portfolios from 1 March 2019.
- (e) The asset composition, performance of the default investment portfolio(s) compared to appropriate benchmarks, top 10 holdings by value and fund returns for the current and at least two previous financial years should be communicated to members at least once every year.

4.3. Paid-up membership certificates

For purposes of consistency and uniformity the paid-up membership certificate, which must be presented to a member in terms of Regulation 38(1)(b)(ii), should as far as possible resemble the template attached to this guidance notice.

4.4. Retirement benefits counselling

(a) Unless otherwise stipulated, retirement benefits counselling may be provided either in person or in a written format. In either event, a fund must retain a record of the retirement benefits counselling provided to each member.

(b) A person appointed by a fund to provide retirement benefits counselling does not need to be a registered FSP or financial advisor in terms of the Financial Advisory and Intermediary Service Act, 2002. However, the board of a fund giving access to retirement benefits counselling in person must be satisfied that the person who provides the retirement benefits counselling is suitably qualified and experienced, and is able to properly manage any conflicts of interest.

(c) Retirement benefits counselling does not include advice, even on tax matters, and members should be expressly informed of this fact. If, in conjunction with providing retirement benefits counselling, advice, including tax advice, is also provided, then the person providing the advice must be registered as a financial advisor with the Authority or tax practitioner in terms of the Income Tax Act, 1962 for tax matters.

(d) It is recommended that access to retirement benefits counselling, as required in terms of Regulation 39(2)(e), should be provided no longer than 6 months before a member's retirement from the fund and the board should make every effort to ensure that the information provided during the retirement benefits counselling is still relevant and appropriate at retirement age.

- (e) Whenever members are given access to retirement benefits counselling, a disclosure and explanation must be provided in a clear and understandable language, including risks, costs, fees and charges, of all of the items mentioned in the definition of “retirement benefits counselling”; except that in respect of Regulation 39(2)(e), it is expected that there be compliance only with items (b) and (d) of the definition.

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

- (a) Funds with defined benefit categories in their rules have been exempted from compliance with this provision in terms of a general exemption issued by the Authority under Notice No. 2 of 2018.
- (b) The effect of the exemption is that funds with defined benefit categories may convert paid-up benefits to a defined contribution component but are not compelled to do so.

4.6. Paid-up members

- (a) Boards of funds must apply their minds and reasonably determine whether the administration fees and charges for paid-up members are fair, reasonable and commensurate with the cost of providing the administration service to members still in the service of the participating employer. Administration fees for paid-up members should, in the normal course, be less than the administration fees for in-service members due to the absence of contributions to administer and schedules to consider every month.
- (b) The deduction of administration fees for paid-up members does not constitute a reduction of a benefit, however trustees are required to implement a paid-up administration regime that avoids the benefits of paid-up members (especially those with small paid up benefits) being eroded over time by fund expenses.

- (c) Investment fees must not differ between paid-up and in-service members. The effect of this requirement is that each individual member's investment fees are calculated and charged on the same basis, irrespective of whether they are in-service or paid-up members.
- (d) A member may elect to transfer a paid-up benefit from another fund at any stage of membership and no charges may be levied in respect of this transfer. This does not include section 14 fees payable to the Authority.
- (e) Section 37C of the Act is applicable to a paid-up member's benefit, in the same manner that it would apply to any other death benefit payable by a fund.
- (f) Funds are informed that the Authority intends establishing and maintaining a database of all paid-up membership certificates. Funds must therefore ensure that they accurately and timeously update the Authority's paid-up membership certificates database once the database is operational.

4.7. Annuity strategies

- (a) Beneficiary funds do not need to comply with Regulation 39.
- (b) 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.
- (c) Regulation 39(2)(e) does not prescribe the maximum time period before a member's normal retirement age that the member must be given access to retirement benefits counselling, but funds will be expected to exercise reasonability when deciding on when to provide counselling and consider the members' best interests. The Authority recommends that it should not be longer than 6 months before a member's retirement so that the information is still relevant at retirement age.

- (d) In respect of living annuities, the investment choice is limited to a maximum of four investment portfolios. The number of investment portfolios may be less than four and can even be a single portfolio.

4.8. Exemptions

- (a) When a fund applies for an exemption from any of the provisions of the Default Regulations, the fund must specify whether the exemption is in terms of regulation 37(3), 38(3) or 39(6), and ensure that it applies for the correct exemption.
- (b) Applications for exemption must be submitted via the Authority's online system, using the form attached to this guidance notice.
- (c) In order to substantiate the application for exemption, the Authority may request supporting documents. Alternatively, funds may submit supporting documents with the initial application for exemption, such as:
 - (i) For terminating funds - section 14 approval letter, board resolution, etc.
 - (ii) For asset values - extract from the financial statements, trial balance, etc.
 - (iii) For membership statistics - extract from the financial statements, membership reconciliation, etc.
 - (iv) Any other document that may be relevant to support the application.
- (d) The Authority may exempt any person or class of persons from a specified provision of the Default Regulations, unless it considers that granting the exemption will be contrary to the public interest or may prejudice the achievement of the objects of the Default Regulations. In this regard, the Authority will take into account that the Default Regulations are meant to improve the outcomes for members of retirement funds by, among other considerations, ensuring that they get good value for their savings and make informed decisions.

(e) Exemptions will be granted in writing and any exemption that is granted to a fund will be published on the Authority's website.

5. ENQUIRIES

Any enquiries relating to the application of the Default Regulations may be submitted to FSCA.defaultregs@fsc.co.za.



OLANO MAKHUBELA
DIVISIONAL EXECUTIVE: RETIREMENT FUNDS SUPERVISION
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY
Date: 12 December 2018

PAID-UP MEMBERSHIP CERTIFICATE

Requirement in terms of Regulation 38(1)(b)(ii) of the Pension Funds Act, 1956

Details of the Fund

Name of fund: XYZ Pension Fund

Registration number: 12/8/9876543

Registered address: 1234 Long Street, Cape Town, 8000

Telephone number: 021-654 3210

Email address: principal.officer@xyzpf.co.za

Facsimile: 021-654 3211

Details of the Administrator

Administrator: ABCD Administration

Registration number: 24/101112

Registered address: 4567 Church Street, Pretoria, 0001

Telephone number: 012-345 6789

Email address: resp.person@abcdadmin.co.za

Facsimile: 012-345 6788

Details of the Member

Member's full name: Ms Jane Smith

Identity number: 780101 5678 087

Tax number: 1234567890

Fund membership number: 123/01/1994

Address: 579 Victoria Road, Camps Bay, Cape Town, 8040

Telephone number: 021-987 6543

Cellular phone number: 083 456 7890

Email address: janer@pfmember.co.za

Paid-up date: 20 September 2018

Value of member's individual

account / reserve as at paid-up date: R 1 450 695.31

Default investment portfolio invested in: Moderate equity

ATTENTION MEMBER: Please note that it is incumbent upon the member to inform XYZ PENSION FUND or ABCD Administration if any of the member's contact details as stated above has changed.

I hereby certify that the above information has been verified against XYZ Pension Fund's records and is to the best of my knowledge true and correct as at the date of issue.

PRINCIPAL OFFICER: XYZ PENSION FUND

Date of issue: 20 November 2018

APPLICATION FOR EXEMPTION FROM THE DEFAULT REGULATIONS

1. DETAILS OF THE FUND				
1.1. Name of fund: (hereinafter referred to as "the fund")				
1.2. Registration number: 12/8/				
1.3. Asset Value:				
1.4. Type of fund:	Pension			
	Provident			
	Pension Preservation			
	Provident Preservation			
	Retirement Annuity			
	Beneficiary			
1.5. Status:	Active			
	Terminating			
1.6. If terminating, provide FSCA case number in respect of section 14 or deregistration application:				
1.7. Does the fund provide Member Investment Choice:	Yes			
	No			
1.8. Membership Composition (Indicate number of members per category):	Active / In-service			
	Paid-up			
	Unclaimed Benefits			
	Pensioners			
2. DETAILS OF THE EXEMPTION APPLICATION				
2.1. Exemption is applied for in terms of:	Regulation 37(3)			
	Regulation 38(3)			
	Regulation 39(6)			
2.2. To be exempted from the following specific regulation/s:	37(1)	38(1)(a)	39(1)(a)	
	37(2)(a)	38(1)(b)(i)	39(1)(b)	
	37(2)(b)	38(1)(b)(ii)	39(2)(a)	
	37(2)(c)	38(1)(c)	39(2)(b)	
	37(2)(d)	38(1)(d)	39(2)(c)	
	37(2)(e)	38(1)(e)(i)	39(2)(d)	
	37(2)(f)	38(1)(e)(ii)	39(2)(e)	
	37(2)(g)	38(1)(e)(iii)	39(2)(f)	
	37(2)(h)	38(2)(a)	39(3)(a)	
		38(2)(b)	39(4)	
		38(2)(c)	39(5)	
	38(2)(d)			
	38(2)(e)			

2.3. State the fund's rule number/s that are affected:

(eg. for exemption from regulation 39(1)(b), the specific rule which enables a member to elect an annuity)

2.4. The fund's reasons for applying for the exemption:

2.4. The fund's motivation for why granting the exemption will not be contrary to the public interest:

2.5. The fund's motivation why granting the exemption will not prejudice the objects of the default regulations:

2.6. Other information relevant to the consideration of this application:

3. DECLARATION

We, the undersigned, declare that:

- 3.1. the information above is to the best of our knowledge true and correct;
- 3.2. we are duly authorised to submit this application on behalf of the fund;
- 3.3. we are aware that no exemption is valid unless granted in writing by the Financial Sector Conduct Authority; and
- 3.4. we are aware that if an exemption is granted, the details of the exemption will be published on the Financial Sector Conduct Authority's website and hereby warrant that the fund consents to such publication.

CHAIRPERSON:

Signature: _____

Full name: _____

Date: _____

TRUSTEE:

Signature: _____

Full name: _____

Date: _____

PRINCIPAL OFFICER:

Signature: _____

Full name: _____

Date: _____