



Financial Sector  
Conduct Authority

# Guidance for Trustees Workshop

## DEFAULT REGULATIONS:

### Regulations 37, 38, 39 and 40

27 May 2019

Naheem Essop

Retirement Funds Supervision Division

# Default Regulations

## INTRODUCTION

*“...are meant to **improve the outcomes** for members of retirement funds by ensuring that they get **good value** for their savings and **retire comfortably**. The regulations require retirement funds’ trustee boards to offer a **default in-fund preservation** arrangement to members who leave the services of the participating employer before retirement, and also a **default investment portfolio** to contributing members who do not exercise any choice regarding how their savings should be invested. For retiring members, a fund should have **an annuity strategy** with annuity options, either in-fund or out-of-fund, and can only “default” retiring members into a particular annuity product after a member has made a choice.” (my emphasis)*

- National Treasury: Media Statement

25 August 2017



# Default Regulations

## ***“Implementation timelines***

*All **new default arrangements** that come into operation on or after the **1 September 2017** effective date of the regulations must comply with the requirements set out in the regulations.*

***Existing default arrangements** will be expected to be fully aligned to the regulations 18 (eighteen) months after the effective date (1 September 2017) of the regulations, i.e. by **1 March 2019.**”*

- National Treasury: Media Statement

25 August 2017



# Default Regulations

## ***“Commencement***

***3. These amendments to the Regulations **come into effect on 1 September 2017**. All default arrangements **in place** on the effective date of these amendments to the Regulations must comply with the provisions of these amendments to the Regulations **within eighteen (18) months** of the effective date.”***

- Government Gazette, 25 August 2017

No. 41064





# FSB Notice 3 of 2017

***“EXEMPTION FROM THE PROVISIONS OF REGULATIONS 37, 38 AND 39 MADE IN TERMS OF SECTION 36 OF THE PENSION FUNDS ACT***

*I, Dube Phineas Tshidi hereby, in terms of regulations 37(3), 38(3) and 39(6), exempt all funds registered before 1 March 2018 from the provisions of regulation 37, 38 and 39 until 1 March 2019.”*

**DUBE TSHIDI**  
**REGISTRAR OF PENSION FUNDS**  
**30/08/2017**



# Default Regulations

meaning of **DEFAULT**

*“to fail to do something, such as pay a debt, that you legally have to do”*

*“the thing that exists or happens **if you do not change it intentionally** by performing an action”*

*- Cambridge Dictionary*





# Default Regulations

**Regulation 37** – Default investment portfolios

**Regulation 38** – Default preservation

**Regulation 39** – Annuity Strategy

**Regulation 40** - Application





# Default Regulations

*Which funds do the Default Regulations apply to?*

	PENSION FUND	PROVIDENT FUND	RETIREMENT ANNUITY FUND	BENEFICIARY FUND	PENSION PRESERVATION FUND	PROVIDENT PRESERVATION FUND	FUNDS IN VOLUNTARY LIQUIDATION
REG 37 <sup>1</sup>	Yes	Yes	No	No	No	No	No
REG 38 <sup>2</sup>	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**

# Default Regulations

*What can members expect?*

## DEFAULT INVESTMENT PORTFOLIO

- Upon joining an employer that offers membership of either a pension fund or provident fund as condition/benefit, the member **does not have to apply their mind or seek professional advice** as to which investment portfolio their contributions should be invested.
- The member should be **comforted** by the knowledge that the default investment portfolio in which they will be placed by the fund, **must by law**, meet certain criteria which is **designed to be in their best interests**.





# Default Regulations

*What can members expect?*

## DEFAULT PRESERVATION

- If the member leaves the service of their employer before reaching retirement age, they **no longer have to choose immediately** between either **cashing out** or **transferring**. Before making a decision, the member can expect to be given access to **retirement benefits counselling**.
- **Until the member has made a choice**, the member remains a member of the fund and is categorised as a “**paid-up member**”.






# Default Regulations

*What can members expect?*

## DEFAULT PRESERVATION

- A paid-up member must be presented with a **paid-up membership certificate within 2 months** of the fund becoming aware that they have left the service of the participating employer.
  - **No fees** as a result of being converted to a paid-up member.
  - **Investment fees** will not change.
  - **Administration fees** must be fair, reasonable and commensurate – expect to be lesser.
- 

# Default Regulations

*What can members expect?*

## DEFAULT PRESERVATION

- If a member joins a new employer and participates **in the new employer's fund** then the new fund **must accept** any amount transferred to fund from another fund, for **the defined contribution component** and must:
  - within 4 months request a **list of all paid-up membership certificates** of that member;
  - **request whether the member would like to transfer** savings in respect of each paid-up membership certificate into the new fund; and
  - **arrange** for the transfer, **without levying a charge** for such transfer.





# Default Regulations

*What can members expect?*

## DEFAULT PRESERVATION

- If you are a paid-up member:
  - No **new contributions** or **deductions for risk** benefits.
  - Defined benefit **must be converted** to defined contribution (General Exemption – See PF Notice No. 2 of 2018).
  - Death benefits, retirement and early retirement is **as per the fund rules**.





# Default Regulations

*What can members expect?*

## **ANNUITY STRATEGY**

- Between **3 – 6 months prior to retirement**, the member should be given access to **retirement benefits counselling**.
- Included in the retirement benefit counselling should be an explanation of the fund's annuity strategy, including **the terms of the funds annuity strategy**.





# Default Regulations

*What can members expect?*

## ANNUITY STRATEGY

- At retirement, the member should be **comforted by the knowledge** that the annuity strategy of the fund, **must by law**, meet certain criteria which is **designed to be in their best interests**.
- Drawdown rates in a living annuity that forms part of the fund's annuity strategy must be **compliant** with a prescribed standard. (Not yet prescribed.)
- The fund **monitors** makes **members aware** if their drawdown rates are deemed to be **unsustainable**.








# Default Regulations

*What can members expect?*

## To Sum Up:

- **When joining** an employer or a fund in which the member's employer participates, the member does not have to make a choice and can expect to be placed in a default investment portfolio by the fund which caters for the best interests of the member.
  - **When leaving** the employer, prior to retirement date, the member does not have to cash out or transfer. The member can remain in the fund as a paid-up member.
  - **Upon reaching retirement age**, the fund must have an annuity strategy which is compliant with the law and designed to be in the member's best interests.
  - At each of these stages, members can expect to be given **access to retirement benefits counselling**.
- 

# Default Regulations

The board must ensure and be able to demonstrate to the FSCA on request that the **default investment portfolio**:

- (a) Is **appropriate**.
- (b) Composition and performance is **adequately communicated** to members.
- (c) Fees are **reasonable and competitive**.
- (d) Fees are **disclosed** to the board and **relevant information communicated** to members.
- (e) Considers **both passive and active** investment strategies.
- (f) Does **not include loyalty bonuses or complex fee structures**.
- (g) Does **not lock members in** and members may transfer out at least **once every 12 months**.
- (h) Is **reviewed on a regular basis** by the board.





# Default Regulations

## **Paid-Up Membership Certificate**

Must contain following **minimum information** in terms of the definition:

- Fund name, address, registration number and contact details.
- Administrator name, address and contact details.
- Member name, address, identity number, tax number, fund membership number and most recent contact details.
- Date member became paid-up and certificate issued.
- Value of individual account/reserve of member at date of becoming paid-up.

**See sample in PF Guidance Notice 8 of 2018**





# Default Regulations

## Retirement Benefits Counselling

Defined in the definition of regulations as: the **disclosure and explanation**, in a **clear and understandable** language, including **risks, costs and charges**, of:

- The available investment portfolios;
- The terms of the fund's annuity strategy;
- The terms of and process by which a fund, handles preserved benefits in terms of regulation 38; and
- any other options available to members.

Retirement benefits counselling **does not constitute advice in terms of the FAIS Act.**

**Can be done in writing.**





# Default Regulations

## Retirement Benefits Counselling

- 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**.
- If **tax advice** is also provided then the person providing the advice **must be registered as a tax practitioner** in terms of the Income Tax Act, 1962.





# Default Regulations

## Annuity Strategy

**In addition** to what is stated earlier, the board must ensure and be able to demonstrate to the FSCA on request that:

- (a) The strategy is **appropriate and suitable** for the specific classes of members.
- (b) For **living annuities**, the asset class composition, performance and change in income **communicated to members** – clear and understandable language.
- (c) Fees are **reasonable and competitive**.
- (d) Fees and charges, **and their impact on members' benefits**, are disclosed to members – **clear and understandable language**.



# Default Regulations

**Living annuities** may form part of an annuity strategy if –

- investment choice is **limited to 4 investment portfolios**; and
- these portfolios must be **compliant with regulations 28 and 37**; and
- **drawdown levels are compliant** with the prescribed standard.

**In-fund annuities** other than living annuities also permissible **if rules provide for it**.

Out of fund annuities, **provided by a long-term insurer**, other than living annuities may also be provided as part of annuity strategy.







# Default Regulations

What should trustees ensure?

- The fund's **default investment portfolio** and **annuity strategy** must be set out in the fund's **investment policy statement**.
- The fund's **default preservation arrangements** must be set out in the **rules** of the fund.
- Can overlap if it is appropriate to do so.
- Apply for **exemption or extension** if the fund is not yet compliant.





# Default Regulations

## EXEMPTIONS

- The Registrar may on **written application** by a fund or in general, exempt a fund, or categories, types or kinds of funds, from all or any of the provisions of these regulations, subject to conditions that the Registrar may impose.
- Template included in **PF Guidance Notice 8 of 2018** and applications submitted **on-line**.
- Section 281 of Financial Sector Regulation Act, 2017, consider whether:
  - (a) will be **contrary to the public interest**; or
  - (b) may prejudice the achievement of the **objects of a financial sector law**.



# Default Regulations

## ENQUIRIES

Any enquiries relating to the application of the Default Regulations may be submitted  
to:

[FSCA.defaultregs@fsca.co.za](mailto:FSCA.defaultregs@fsca.co.za)



# QUESTIONS?

# THANK YOU

