



fsp license no. 43648
po box 64 buccleuch gauteng 2066 | hurlingham office park 59 woodlands drive
block a suite 3 | cnr. republic road & william nicol drive hurlingham manor |
T:011 100 8100 | www.tennant.co.za



An Update on the Default Regulations – Part Two of Three: Default Preservation and Portability

Regulation 38 – default preservation and portability

The regulations ultimately require every retirement fund to put in place and implement a default annuity strategy.

Compulsory certificate of paid-up membership

Regulation 38 requires that all retirement funds will need to provide their paid-up members with a **certificate of membership** within **two-months** of becoming aware that the member has left the service of the participating employer.

Financial Sector Conduct Authority (“FSCA”) Guidance Notice 8 of 2018: the FSCA has set out the format of the paid-up membership certificates (attached to the Guidance Notice) and the Guidance Notice requires that funds follow this format as far as possible.

Fees and charges

Regulation 38 provides that the fund is permitted to charge the paid-up members fees and charges but that these fees and charges must not differ simply on the basis of whether a member is paid-up or not.

Guidance Notice 8 of 2018 expands on this to state that each individual member's **investment fees** must be calculated and charged on the same basis whether they are paid-up members or not.

Administration fees for paid-up members must be “fair, reasonable and commensurate” with the cost of in-service members.

It is also specifically required that an **initial once-off fee may not be levied** because a member becomes paid-up.

Guidance Notice 8 of 2018 reiterates the above but also provides for the following:

- Administration fees for paid-up members should, in the normal course, be **less** than the administration fees for in-service members. The FSCA attributes this to the fact that contributions do not need to be administered, nor are schedules required to be considered, monthly;
- Deduction of administration fees from paid-up benefits do not amount to a reduction of paid-up members' benefits;
- Importantly the FSCA requires that the board of a fund is required to administer paid-up benefits in such a way as to **avoid the paid-up benefits being eroded over time** by fund expenses;
- A member may elect **at any time to transfer-in a paid-up benefit** to the fund to which they belong. The fund may **not charge a fee** for this. Section 14 transfer fees would still be paid by the fund to the FSCA.

Paid-up members may request to transfer amounts into the fund at any time

As we know, Regulation 39 makes provision for the process of how members should be asked by their fund about whether they want to transfer paid up benefits in from other funds to the fund to which they belong now and sets a time period for this. **No charges** may be levied on these transfers.

It should be noted that the FSCA has made it clear that members may request transfer to the fund of these paid-up amounts **at any stage** of their membership.

Benefits for paid-up members and rule requirements

As we are already aware, in terms of Regulation 38, the rules of a retirement fund will need to be amended. The FSCA has clarified that eligibility for death benefits, retirement and early-retirement benefits for paid-up members will be as per what is provided in the rules. This pre-supposes that the rules deal with these benefits for paid-up members, where applicable, and state the benefits to which they are entitled.

Note also that death benefits paid to paid-up members will be subject to section 37C of the Pension Funds Act, as per Guidance Notice 8 of 2018.

Paid-up members and conversion of defined benefit components to defined contribution components

Regulation 38 requires that the rules provide that upon a member becoming paid-up a defined benefit amount must be converted to a defined contribution component and be preserved as a defined contribution component. However, the FSCA has **exempted funds with a defined benefit category** from compliance with this provision. Thus, funds with a defined benefit category can decide whether they want to convert paid-up benefits to a defined contribution component or not. Fund rules must still deal with the benefit entitlements of paid-up members.

Database of paid-up membership certificates

The FSCA, in Guidance Notice 8 of 2018, let us know that it intends establishing a database of all paid-up membership certificates. Thus, once this has been established funds will be required to provide and update information for the database.

Retirement benefits counselling will need to be provided on transfer out from paid-up status.