



PAID UP MEMBERS AND SECTION 37C LUMP SUM BENEFITS

The Financial Sector Conduct Authority (FSCA) on 13 November 2019 issued a number of documents on the same topic, that is, paid up members and lump sum death benefits:

- FSCA Communication 6 of 2019 (the Communication),
- Notice of publication of an Interpretation Ruling
- A draft Interpretation Ruling (the draft Interpretation),
- An extension notice for compliance with Regulation 38; and
- A comments template for the draft Interpretation.

The Communication explains the background to the draft Interpretation.

FIRSTLY, WHAT IS AN INTERPRETATION RULING?

The idea behind an Interpretation Ruling (which is provided for in the Financial Sector Regulation Act) is that the FSCA, through an Interpretation Ruling, promotes clarity, consistency and certainty in the interpretation and application of financial sector laws, in this case the Pension Funds Act.

The FSCA is required to issue a draft of the Interpretation Ruling and call for public comment.

Once an Interpretation Ruling is issued by the FSCA, it must then act in accordance with the Interpretation Ruling until such time, *to paraphrase*, as a court gives a different interpretation to the Interpretation Ruling or the particular provision of the legislation is done away with.

WHY WAS THE COMMUNICATION AND DRAFT INTERPRETATION ISSUED?

For some time there has been debate around whether or not section 37C applies to the lump sum death benefits of paid up members and in what circumstances. We are referring to paid up members as provided for in the default regulations. That is, members that have left service of the employer but have not instructed the fund in writing as to payment or transfer of their benefit.

Some of this debate was centered on the conflicting wording of the FSCA and old Financial Services Board notes.

So, the question has arisen: if paid up members die, must the fund pay out lump sum death benefits in terms of section 37C or not? The rules of funds submitted to the FSCA for registration have differed in this regard.

The draft Interpretation seeks to notify the industry how the FSCA interprets the Pension Funds Act to answer this question, so that the industry knows how the FSCA will act going forward.

Please note that the draft Interpretation is not yet final.

FSCA VIEW: WHEN DOES SECTION 37C APPLY WITH RESPECT TO PAID-UP MEMBERS?

After consideration of the wording of section 37C of the Pension Funds Act, the FSCA comes to the conclusion that section 37C must be applied in the following circumstances:

- (a) A benefit due to a paid up member [who has died];
- (b) A benefit due to a paid up member where the fund received a written instruction from the paid up member before they died (to pay or transfer the benefit) but the fund had not yet paid or transferred the benefit before the member died, and
- (c) A retirement benefit due and payable to a member but had not yet been paid to the member before the member died.

The above applies whether or not the fund benefit is insured (by policy of insurance).

Funds will be allowed 6 (six) months from date of the Interpretation Ruling (whenever it is published in final form) to ensure that their rules comply with the Interpretation Ruling.

EXTENSION NOTICE

Due to the draft Interpretation not being finalised as yet, the FSCA has given funds an extension for compliance with the preservation and portability default regulations (Regulation 38) until **29 February 2020**. The extension appears to only apply to funds **that have already submitted rule amendments to comply with the preservation and portability default regulations (Regulation 38)**. The wording of the extension is a bit confusing, but the above interpretation appears to be the intention.