



**NOTICE REGARDING THE PUBLICATION OF THE DRAFT FSCA INTERPRETATION RULING [-]
of 2023 (RF): INTERPRETATION AND APPLICATION OF SECTION 37C OF THE PENSION FUNDS
ACT, 1956**

FINANCIAL SECTOR REGULATION ACT, 2017

The Financial Sector Conduct Authority in accordance with section 142(7) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), hereby invites submissions on draft FSCA Interpretation Ruling [-] of 2023 (RF): Interpretation and Application of section 37C of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the extent set out in the Schedule.

This Notice together with a communication supporting the draft Interpretation Ruling are available on the Authority's website at <https://www.fsca.co.za>.

Submissions on the draft Notice must, using the submission template published alongside this draft Notice, be submitted in writing on or before 26 September 2023 to the FSCA, at FSCA.RFDStandards@fsca.co.za.

**KATHERINE GIBSON
DEPUTY COMMISSIONER**

Date of Publication: 14 August 2023

SCHEDULE



Financial Sector
Conduct Authority

DRAFT FSCA INTERPRETATION RULING [-] OF 2023 (RF)

PENSION FUNDS ACT, 1956 (ACT NO. 24 OF 1956)

FINANCIAL SECTOR REGULATION ACT, 2017

**INTERPRETATION RULING: INTERPRETATION AND APPLICATION OF SECTION
37C OF THE PENSION FUNDS ACT, 1956**

1. PURPOSE OF THE INTERPRETATION RULING

This Interpretation Ruling is issued in terms of section 142(1) of the FSR Act to provide clarity, consistency and certainty in the interpretation and application of section 37C of the Act. It revokes and replaces FSCA Interpretation Ruling 1 of 2020 (RF) issued on 25 March 2020.

2. DEFINITIONS

In this Interpretation Ruling “**the Act**” means the Pension Funds Act, 1956 (Act No. 24 of 1956), and any word or expression to which a meaning is assigned in the Act bears the meaning so assigned to it, and unless the context indicates otherwise-

“**Default Regulations**” means regulations 37, 38, 39 and 40 of the Regulations made in terms of section 36 of the Act as published in GN R98 in *Government Gazette* 162 of 26 January 1962, and amended on 25 August 2017 in GN 863/2017;

“**deferred retiree**” means a member who has reached retirement age and such member has not elected to withdraw their retirement benefit or a member who has reached retirement age and elected to remain in a pension fund pursuant to the pension fund rules; and

“**FSR Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

3. BACKGROUND

- 3.1 On 25 March 2020, the Authority issued FSCA Interpretation Ruling 1 of 2020 (RF), which replaced Information Circular PF No. 2 of 2010 issued by the erstwhile Registrar of Pension Funds.
- 3.2 Since then, it has come to the attention of the Authority that certain aspects of FSCA Interpretation Ruling 1 of 2020 (RF) require amplification and revision, specifically in respect of unclaimed benefits.
- 3.3 The Authority has taken the decision to revoke FSCA Interpretation Ruling 1 of 2020 (RF) and issue a replacing Interpretation Ruling in terms of section 142(1) and 142(5) of the FSR Act, in order to promote legal certainty and to ensure clear and consistent interpretation and application of section 37C of the Act.

4. INTERPRETATION AND APPLICATION OF SECTION 37C OF THE ACT

- 4.1 The introduction to section 37C(1) of the Act provides as follows:

“Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner...”

- 4.2 Section 37C provides for the manner in which the benefit payable upon the death of a member must be distributed. It does not provide for the manner in which any benefit that is payable upon the death of a member must be calculated. The calculation of such benefit must be done in accordance with the registered rules of the fund concerned.
- 4.3 Section 37C applies despite anything to the contrary contained in any law or the rules of a fund. Therefore, in the event that a registered rule is in conflict with section 37C, section 37C prevails.
- 4.4 Reference to “*payable ...upon the death of a member*” in section 37C means that it is the death of the member that resulted in the benefit becoming payable. If the fund received a written instruction from the member to pay out or to transfer the benefit prior to the member’s death, then it is that written instruction that caused the benefit to be payable (not the death of the member) and accordingly section 37C will not be applicable.
- 4.5 The same principle applies in relation to unclaimed benefits. An unclaimed benefit by its nature is a benefit that has vested because it is due and payable to the person entitled to it. The benefit is not due and payable because of the death of a member, and accordingly section 37C will not be applicable. Where the person entitled to the unclaimed benefit dies after the benefit has become an unclaimed benefit, the benefit is payable to that person’s estate and not in terms of section 37C.

- 4.6 Regulation 38(1)(b)(i)¹ provides that if a member has not made an election to pay out or transfer his/her benefits upon leaving the service of a participating employer before retirement, such member is a paid-up member. Put differently, even when a member exits the service of their participating employer, such member will only cease to be a paid-up member once such member instructs the fund in writing to pay out or transfer the member's benefits.
- 4.7 A paid-up member and a deferred retiree is a 'member' as defined in the Act. Since section 37C is applicable to a 'member' under the circumstances set out in that section, it follows that section 37C is applicable to a paid-up member and a deferred retiree. That changes when a member makes an election (instructs the fund) to withdraw their benefit, because it is the election to withdraw that makes the benefit payable, not the death of the member. The same principle applies to unclaimed benefits, in that the fact that it is unclaimed benefits makes it due and payable to the person entitled to it, and not the death of the member.
- 4.8 Therefore, reference to "*any benefit*" in section 37C includes:
- (a) a paid-up member's benefit; and
 - (b) a deferred retiree's benefit.

5. EFFECTIVE DATE

- 5.1 This Interpretation Ruling takes effect on the date of publication.
- 5.2 Information Circular PF No. 2 of 2010 and FSCA Interpretation Ruling 1 of 2020 (RF) are hereby withdrawn.

KATHERINE GIBSON
DEPUTY COMMISSIONER FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: [-] August 2023

¹ As explained in paragraph above 3.3 above.