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| Minister | Hon David Clark | Portfolio | Finance/Commerce and Consumer Affairs |
| Title of Cabinet paper | KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 | Date to be published | 9 November 2021 |

List of documents that have been proactively released

| Date | Title | Author |
|-------------------|---|--|
| September 2021 | KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 | Offices of the Minister of Finance/Minister of Commerce and Consumer Affairs |
| 23 September 2021 | KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 LEG-21-MIN-0149 Minute | Cabinet Office |

Information redacted

NO

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In Confidence

Offices of the Minister of Finance and the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021

Proposal

- 1 This paper seeks authorisation to submit to the Executive Council the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021, which require the transfer of default members from outgoing KiwiSaver default schemes to the new KiwiSaver default schemes.

Executive summary

- 2 The regulations require the reallocation and transfer of members from old providers (those not reappointed as KiwiSaver default providers for the term starting 1 December 2021) to new providers (the six providers selected to provide KiwiSaver default funds from 1 December 2021).
- 3 The regulations set out basic requirements for the reallocation and transfer, including that the reallocation will be sequential. Further details regarding the transfer may be set out in directions (from us as Ministers, or from the Commissioner of Inland Revenue) made under the regulations.

Background

New KiwiSaver default providers have been appointed

- 4 KiwiSaver members who do not choose their own fund and are between the ages of 18 and 65 years are automatically enrolled in a “default fund”. The terms of appointment for the existing nine providers of default funds expire on 30 November 2021.
- 5 On 2 August 2021, we appointed six KiwiSaver providers as providers of default funds from 1 December 2021 (“new providers”). Five of the current providers of default funds were not reappointed (“old providers”).

Cabinet agreed to regulations to transfer members of outgoing KiwiSaver default providers

- 6 Following Cabinet feedback on 4 December 2019, the Ministers of Finance and Commerce and Consumer Affairs decided that regulations should be made to transfer default members from old providers to the new providers, after those members have had a chance to stay in the fund. They also decided not to transfer default members that have actively chosen to stay in a fund. Cabinet invited the Ministers to issue drafting instructions and make further decisions about those drafting instructions without seeking further feedback from Cabinet [DEV-19-MIN-0342 refers].

- 7 The decision to transfer members was communicated to prospective default providers as part of the procurement process. Prospective providers knew about the planned transfer and tendered for default status on that basis.

Regulations for approval

Purpose of the regulations

- 8 The purpose of the regulations is to ensure that KiwiSaver members who are with old providers and who have not chosen a KiwiSaver provider (“non-active default members”) are reallocated and transferred to new default providers.
- 9 Without the regulations, those members would remain with the old providers. This would be undesirable because they would not receive the benefits and protections of being in one of the new default funds. Old providers currently have obligations to default members under their terms of appointment, but these will fall away on 1 December. In contrast, the new default providers will offer low fees and be required to assist members at key points in their KiwiSaver journey.
- 10 The regulations do not affect default members of the providers that have been reappointed. While those members will need to be moved from conservative funds to balanced funds, that move is covered by the instrument of appointment.

The regulations will require the transfer of members from old default providers

- 11 The regulations will require the reallocation and transfer of members from old default providers to the new default providers.
- 12 Old providers will be required to give Inland Revenue (IR) a list of their non-active default members. For each member, IR will be required to reallocate the member sequentially to the new providers. This will mean that each new provider will receive approximately the same number of transferred default members. Inland Revenue will also:
- 12.1 notify the reallocated member of the provider to which they have been reallocated, and why they have been reallocated;
 - 12.2 inform the old provider of the new provider to which the member has been reallocated;
 - 12.3 give the new provider information about the member that has been allocated to the provider (including their name, address, date of birth and tax file number, and other relevant information).
- 13 Old providers will then be required to transfer information about the members, and fund accumulations, to the relevant new provider. The regulations set a timeframe of up to 75 days for this to happen, with provision for the FMA to extend the timeframe to up to 110 days by direction. Transferring members will be out of market for a few days, not the whole 75-day period.
- 14 We consider that this timeframe is suitable to give providers time to transfer what may be a very large number of members. Providers have obligations to act in members’ best interests, and the long timeframe (with capacity to extend) will give providers flexibility to space their transfers over a long period if that would be in the interests of members given market

conditions. This will reduce the risks for markets and members of providers needing to trade large volumes and values of funds to facilitate member transfers.

- 15 There will be a fast-track transfer process for people who apply to withdraw their funds under certain categories (first home, serious illness, significant financial hardship, and life-shortening congenital conditions).
- 16 The regulations provide that further detail about the reallocation and transfer process can be specified in directions made under the regulations by the Ministers or the Commissioner of IR.

The regulations amend the requirements in relation to annual returns

- 17 There is small consequential change to the KiwiSaver Regulations 2006 as a result of choosing new providers.
- 18 The KiwiSaver Regulations 2006 require providers to file annual returns. Old default providers will be default providers for only part of the 2021/22 financial year. As a result, the form in which these annual returns must be filed is not clear from the KiwiSaver Regulations.
- 19 Accordingly, the regulations make it clear that old providers are to report as if they have been default providers for the whole financial year.

Risks are being mitigated

- 20 The main operational risk for IR arises in relation to initiating a large number of transfers at one time. This risk is being mitigated by the use of existing IR processes and systems for the transfer, as well as the plan to carry out the reallocation process over the weekend of 4-5 December (when work volumes are lower). This will be thoroughly tested well in advance of the transfer occurring.
- 21 There are also operational risks associated with the fact that the transfer will be occurring at the same time as a major release of IR's business transformation programme and the migration to IR's new automated messaging system. The transfer is occurring during December/January which is typically a period of high staff leave, and less operational resources available to support member and provider queries. There is also the risk that IR might be required to deliver the KiwiSaver transition remotely due to COVID-19. IR and the providers are mitigating these risks by carefully prioritising and coordinating their resources across multiple workstreams. In addition, there is flexibility in the regulations for the Commissioner of IR to delay the transfer process beginning, by up to 45 days.
- 22 There are residual risks of volatility, adverse price movement and increased trading costs as a result of the transition. The FMA will be monitoring market conditions over the funds transfer period and can extend the time period for funds to be transferred if required.
- 23 There is a risk of member confusion regarding the transfer, and default members will not be able to transfer their funds during the transition. Providers and government will be making proactive general communications in the lead up to the transition so that members are aware of the upcoming change and can choose a different fund (or stay in the same fund) ahead of the transition.

Timing and 28-day rule

24 The regulations will come into force on 1 November 2021.

Compliance

25 The regulations comply with each of the following:

- 25.1 the principles of the Treaty of Waitangi;
- 25.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 25.3 the principles and guidelines set out in the Privacy Act 1993;
- 25.4 relevant international standards and obligations;
- 25.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

26 We do not consider there to be any grounds for the Regulations Review Committee to draw these regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

27 The regulations have been certified by PCO as being in order for submission to Cabinet.

Impact Analysis

28 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet feedback was sought for the policy relating to the regulations [DEV-19-MIN-0342 refers].

Publicity

29 We propose to issue a press release once the regulations have been made.

Proactive release

30 We plan to proactively release this paper on MBIE's website once the regulations have been made.

Consultation

31 The Treasury, Inland Revenue, and the Financial Markets Authority have been consulted in relation to the regulations and this paper.

32 The Privacy Commissioner was consulted and agrees that KiwiSaver regulations to transfer members from old default providers to new default providers do not compromise privacy protections for individuals.

33 The Department of the Prime Minister and Cabinet has been informed of the contents of this paper and the regulations.

Recommendations

We recommend that the Cabinet Legislation Committee:

- 1 **note** that new KiwiSaver providers have been appointed to provide services to default members from 1 December 2021.
- 2 **note** that Cabinet on 4 December 2019 invited the Minister of Finance and the Minister of Commerce and Consumer Affairs to make further decisions on the drafting of the regulations in relation to the transfer of default members if a current provider of default funds was not reappointed, without seeking further feedback from Cabinet [DEV-19-MIN-0342 refers].
- 3 **note** that, following Cabinet feedback on 4 December 2019 and under the delegated authority referred to in recommendation 2 above, we decided that regulations should be made to transfer non-active default members of old default providers to the new providers, after those members have a chance to stay in the fund.
- 4 **note** that the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 give effect to the decision in paragraph 3 above.
- 5 **note** that the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 also amend the KiwiSaver Regulations 2006 to specify the form of annual returns for outgoing default providers.
- 6 **authorise** the submission to the Executive Council of the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021.
- 7 **note** that the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 come into force on 1 November 2021.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Hon Dr David Clark

Minister of Commerce and Consumer Affairs