



Financial Markets Conduct Amendment Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of May 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 543 of the Financial Markets Conduct Act 2013 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 549 of that Act.

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Regulations

1 Title

These regulations are the Financial Markets Conduct Amendment Regulations 2019.

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

4 New regulation 71AA inserted (Additional information to accompany KiwiSaver confirmation information)

After regulation 71, insert:

71AA Additional information to accompany KiwiSaver confirmation information

- (1) This regulation—
 - (a) applies to KiwiSaver Schemes; and
 - (b) prescribes information that must be made available under section 96 of the Act.
- (2) The following information must be made available to scheme participant A (as defined in regulation 70) in relation to an accounting period in relation to which confirmation information is required to be provided to A under regulation 70:
 - (a) A's retirement savings and income projections in accordance with clause 1 of Schedule 7A; and
 - (b) a "Consider your choices" statement in accordance with clause 2 of Schedule 7A.
- (3) However,—
 - (a) if A was not a participant in the scheme for the whole of the accounting period, subclause (2)(a) does not apply;
 - (b) if A was under 18 years of age at the end of the accounting period,—
 - (i) subclause (2)(a) and (b) does not apply; but
 - (ii) the information made available to A must instead include a statement in accordance with clause 3 of Schedule 7A:

- (c) if A was 65 years of age or over at the end of the accounting period, subclause (2) does not apply.
- (4) The information required to be made available under this clause—
- (a) must be made available to A at the same time and in the same manner as the confirmation information is provided under regulation 70; and
- (b) must be included in the same document as the confirmation information.

5 Amendment to Schedule 1

In Schedule 1, after Part 6, insert the Part 7 set out in Schedule 1 of these regulations.

6 New Schedule 7A inserted

After Schedule 7, insert the Schedule 7A set out in Schedule 2 of these regulations.

Schedule 1
New Part 7 inserted into Schedule 1

r 5

Part 7
Provision relating to Financial Markets Conduct Amendment
Regulations 2019

39 Amendments apply from 2019/2020 accounting period

Regulation 71AA, as inserted by the Financial Markets Conduct Amendment Regulations 2019, applies to KiwiSaver schemes in relation to accounting periods commencing on or after 1 April 2019.

Schedule 2

New Schedule 7A inserted

r 6

Schedule 7A

Additional information to accompany KiwiSaver confirmation information

r 71AA

Part 1

Retirement savings and income projections information

1 Retirement savings and income projections

- (1) For the purposes of regulation 71AA(2)(a), A's retirement savings and income projections must be in substantially the following form:

“What you are on track to receive at age 65

[\$*lump sum amount*] as a lump sum,

which would be about

[\$*weekly amount*] a week until age 90.

These figures only relate to KiwiSaver and do not take into account any other retirement savings or income you may have or be entitled to.

These figures are estimates only. They are calculated based on your current balance, contribution rate, and fund choice, and an assumed rate of investment returns of [*x%*].

The calculation uses a number of assumptions, including some about future events such as what investment returns and inflation are likely to be.

The assumptions are set by the government and are important because they affect the result of the calculation. Find out more on the Financial Markets Authority website at [*website*].”

- (2) The lump sum amount and weekly amount must be calculated in accordance with Part 2 of this schedule.
- (3) The assumed rate of investment returns, *x%*, is rate *g* (as defined in clause 4(1)).
- (4) However, if A's balance in the scheme is invested in a multi-fund investment option, instead of specifying a single rate *g*, the statement must specify a separate rate *g* for each fund in which part of A's balance is invested (*see* clause 6(4) and (5)).

2 “Consider your choices” statement

For the purposes of regulation 71AA(2)(b), a “Consider your choices” statement must be in substantially the following form:

“Will your retirement savings be enough?”

A number of choices affect the size of your retirement savings. These include:

- your choice of fund
- your contribution rate
- how long you contribute for.

These are things you can change, so you may wish to consider if your current choices are right for you and your stage of life.

For help to work out what is right for you, contact [*scheme manager name and contact details*], visit www.sorted.org.nz, or seek advice from a financial adviser.”

3 Statement for participants under 18 years of age

For the purposes of regulation 71AA(3)(b)(ii), the statement must be in substantially the following form:

“Saving for your retirement

A little saving over a long period of time can add up to significant retirement savings.

For help to work out what is right for you, contact [*scheme manager name and contact details*], visit www.sorted.org.nz, or seek advice from a financial adviser.”

Part 2**Formulas and assumptions****4 Definitions of variables**

(1) In the formulas in clauses 6 and 7 and in this Part,—

- b is the amount calculated under clause 6(2) (being the estimate of A’s balance in the scheme at age 65 expressed in real terms as a current dollar amount)
- c is the amount calculated under clause 6(3) to (5) (being the estimate of A’s balance in the scheme at age 65)
- d is the assumed rate of inflation, being 2%
- e is the assumed age of eligibility for A to withdraw his or her balance from the scheme, being age 65

- f is A's age at the end of the accounting period, rounded to the nearest whole number
- g is the assumed rate of investment returns applying to A's balance in the scheme up to age e, being,—
- (a) if A's balance in the scheme is invested in a life cycle investment option,—
- (i) if A is under age 50, 3.5%; or
- (ii) if A is age 50 or over, 2.5%; or
- (b) if A's balance in the scheme is invested in a self-select option, the rate determined under subclause (4); or
- (c) in any other case, the rate determined under subclauses (2) and (3)
- h is the assumed rate of investment returns applying to A's balance in the scheme after age e, being 2.5%
- k is the assumed rate of wage and salary inflation, being 3.5%
- m is the total of contributions to the scheme in respect of A during the accounting period (including any one-off voluntary payments up to a total of \$1,500 in one-off payments for the period)
- n is the amount of government contributions for the accounting period in respect of contributions to the scheme for A
- p is A's balance in the scheme at the end of the accounting period
- r is the amount calculated under clause 7(2) (being the estimate of A's weekly amount expressed in real terms as a current dollar amount)
- s is the assumed age at which payment of the weekly amount ceases, being age 90.

- (2) For the definition of variable g, the assumed rate of investment returns for A's balance is to be determined from the following table depending on the type of fund in which A's balance is invested at the end of the accounting period:

Type of fund	Assumed rate of return
Defensive	1.5%
Conservative	2.5%
Balanced	3.5%
Growth	4.5%
Aggressive	5.5%

- (3) If the fund in which A's balance is invested (**A's fund**) is not named or described as being of a type listed in the table, for the purposes of subclause (2),—
- (a) if, having regard to the following, A's fund is equivalent to a type listed in the table, then A's fund is taken to be a fund of that type:
- (i) the scheme's governing documents:

- (ii) the relevant SIPO:
 - (iii) the nature of the investments:
 - (iv) generally accepted market practice:
 - (b) if paragraph (a) does not apply,—
 - (i) the scheme manager must determine which type of fund listed in the table is most closely comparable to A's fund; and
 - (ii) A's fund is taken to be a fund of that type.
 - (4) If A's balance in the scheme is invested in a self-select option,—
 - (a) the scheme manager must determine which type of fund listed in the table is most closely comparable to the portfolio of assets that represent A's balance in the scheme; and
 - (b) for the definition of variable g, the assumed rate of investment returns for A's balance is the rate specified in the table in subclause (2) for a fund of that type.
 - (5) A determination under subclause (3)(b) or (4) must be made—
 - (a) on the basis of how A's balance in the scheme is invested at the end of the accounting period; and
 - (b) on reasonable grounds and having regard to the matters set out in subclause (3)(a)(i) to (iv).
 - (6) In this clause,—

government contribution means a tax credit under subpart MK of the Income Tax Act 2007

one-off voluntary payment means a voluntary payment that is not part of a periodic or regular series of payments and that is not an employer contribution or a Crown contribution (both as defined in section 4(1) of the KiwiSaver Act 2006)

self-select option means an investment option that involves investment in 1 or more funds, securities, and other assets in combinations and allocations selected by an investor from a range of funds, securities, and other assets made available by the manager.
- 5 Rounding**
- For the purposes of this Part, if an amount is required to be rounded, an amount at the midpoint is to be rounded up.
- 6 Calculation of lump sum amount**
- (1) For the purposes of clause 1, A's lump sum amount is amount b calculated in accordance with subclause (2) and rounded to the nearest \$1,000.

- (2) Amount b (which is the estimate of A's balance in the scheme at age 65 expressed in real terms as a current dollar amount) is calculated using the following formula:

$$b = c \times \{1 \div [(1 + d)^{(e-f)}]\}$$

- (3) Amount c (which is the estimate of A's balance in the scheme at age 65) is calculated using the following formulas:

- (a) if $g \neq k$,—

$$c = (m \times \{[(1 + g)^{(e-f)} - (1 + k)^{(e-f)}] \div (g - k)\}) + (n \times \{[(1 + g)^{(e-f)} - 1] \div g\}) + [p \times (1 + g)^{(e-f)}]$$

- (b) if $g = k$,—

$$c = \{m \times [(e - f) \times (1 + g)^{(e-f-1)}]\} + (n \times \{[(1 + g)^{(e-f)} - 1] \div g\}) + [p \times (1 + g)^{(e-f)}]$$

- (4) However, if A's balance in the scheme is invested in a multi-fund investment option, the value of amount c is to be calculated under subclause (5) instead of subclause (3).
- (5) When this subclause applies, amount c (which is the estimate of A's balance in the scheme at age 65) is to be calculated by—
- (a) using the formulas in subclause (3)(a) and (b) to calculate an amount c in relation to each fund in which part of A's balance is invested; and
- (b) adding together the amounts calculated under paragraph (a).
- (6) For the purpose of making the calculations under subclause (5)(a),—
- (a) the references to the scheme in the definitions of the variables of g, m, n, and p are taken to be references to the relevant fund; but
- (b) the \$1,500 limit on voluntary payments in the definition of variable m applies as a single limit on the total of voluntary payment to the scheme (not as separate limits on voluntary payments to each fund).
- (7) If A's balance in the scheme is invested in a self-select option,—
- (a) amount c is to be calculated under subclause (3)—
- (i) as if all of A's balance were invested in a single fund; and
- (ii) with variable g (the assumed rate of investment returns) being determined under clause 4(4); and
- (b) subclause (4) of this clause does not apply (even if the available investments include a multi-fund investment option).

7 Calculation of weekly amount

- (1) For the purposes of clause 1, A's weekly amount is amount r calculated in accordance with subclause (2) and rounded to the nearest \$10.
- (2) Amount r (which is the estimate of A's weekly amount expressed in real terms as a current dollar amount) is calculated using the following formulas:

- (a) if $h \neq d$,—

$$r = b \times (7 \div 365.25) \times \left([(h - d) \times (1 + h)^{(s - e - 0.5)}] \div \{(1 + d)^{0.5} \times [(1 + h)^{(s - e)} - (1 + d)^{(s - e)}]\} \right)$$

- (b) if $h = d$,—

$$r = [b \div (s - e)] \times (7 \div 365.25)$$

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Financial Markets Conduct Regulations 2014 (the **FMC Regulations**) and come into force 28 days after they are notified in the *Gazette*.

The Financial Markets Conduct Act 2013 requires managers of KiwiSaver schemes to give certain information to scheme participants at various times. Regulation 70 of the FMC Regulations lists the information that must be given to participants in annual statements after the end of each accounting period. These regulations insert a *new regulation 71AA* to add some additional information that must be provided at the same time.

The new information that must be given is retirement savings and income projections and a “Consider your choices” statement, which is designed to encourage people to consider their financial situation and whether their current KiwiSaver choices are appropriate. *New Schedule 7A* sets out the form in which the information must be provided and how the projections must be calculated.

The new information does not have to be given to participants who are under 18 or who have only recently joined the scheme (because of the difficulty of making meaningful projections for those participants) or those who have reached 65.

The new requirements apply to annual statements starting with those for accounting periods commencing on or after 1 April 2019.

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment in December 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/assets/ea17a1b5ee/ris-kiwisaver.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 May 2019.

These regulations are administered by the Ministry of Business, Innovation, and Employment.