

Version
as at 1 December 2022



KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021

(LI 2021/283)

KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021: revoked, on 1 December 2022, by regulation 3.

Patsy Reddy, Governor-General

Order in Council

At Wellington this 27th day of September 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 228(1)(e) and 230(1)(a), (ba), (c), and (d) of the KiwiSaver Act 2006—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs; and
- (c) on the recommendation of the Minister of Finance in respect of matters dealt with in subpart 2 of Part 4 of that Act.

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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Regulations

1 Title

These regulations are the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021.

2 Commencement

These regulations come into force on 1 November 2021.

3 Revocation

These regulations are revoked on 1 December 2022.

Part 1

Reallocation and transfer

Subpart 1—Preliminary

4 Purpose

The purpose of this Part is to ensure that some members of KiwiSaver schemes—broadly, those members who have not chosen their own KiwiSaver scheme—are reallocated and transferred to default KiwiSaver schemes if the scheme they are in does not continue as a default scheme after the 30 November 2021 expiry date (or earlier revocation) of the instrument of appointment under which the scheme is provided.

5 Interpretation

In this Part, unless the context otherwise requires,—

2021 terminating event has the meaning set out in regulation 7

Act means the KiwiSaver Act 2006

instrument of appointment means an instrument of appointment under section 132 of the Act

new default scheme has the meaning set out in regulation 6(2) (*see also* regulation 6(3))

old default scheme has the meaning set out in regulation 6(1)

prescribed means prescribed by Schedule 1 or by direction under Schedule 1

revoked, in relation to an instrument of appointment, means—

- (a) revoked by the provider or the Minister under the terms and conditions of the instrument of appointment; or
- (b) revoked in accordance with section 137(2) of the Act

term of appointment, in relation to an instrument of appointment, includes any renewal of the term

transfer list, in Schedule 1, has the meaning set out in clause 2(1) of that schedule

transferring default member has the meaning set out in regulation 8(1).

6 Meanings of old default scheme and new default scheme

- (1) In these regulations, **old default scheme** means a KiwiSaver scheme that—
 - (a) is, or was, specified as a default KiwiSaver scheme in an instrument of appointment that expires on 30 November 2021 (or is, or was, earlier revoked); and
 - (b) is not a new default scheme.
- (2) In these regulations, **new default scheme** means a KiwiSaver scheme that is specified as a default KiwiSaver scheme in an instrument of appointment in respect of which the term of appointment—
 - (a) starts on 1 December 2021; or
 - (b) starts before 1 December 2021 and continues after 30 November 2021.
- (3) However, for the purposes of a reallocation and transfer required by regulation 10, if an instrument of appointment referred to in subclause (2) is terminated, the KiwiSaver scheme to which the instrument relates ceases to be a new default scheme.

7 Meaning of 2021 terminating event

In these regulations, **2021 terminating event**, in relation to an old default scheme (and an instrument of appointment under which the old default scheme is, or was, specified as a default KiwiSaver scheme), means—

- (a) the expiry of the term of appointment on 30 November 2021; or
- (b) the earlier revocation of the instrument of appointment.

8 Meaning of transferring default member

- (1) In these regulations, **transferring default member**, in relation to an old default scheme, means every person who,—
 - (a) immediately before the 2021 terminating event for the scheme, is in the default investment product of the scheme; and
 - (b) is a non-active default member under subclause (2); and
 - (c) is aged 18 or over; and
 - (d) is not a person to whom section 50(4) of the Act applies; and
 - (e) is not a person whose KiwiSaver scheme membership is in the process of being terminated by the provider under clause 4(3) of the KiwiSaver scheme rules; and
 - (f) is not a person who the Commissioner knows is deceased.

- (2) For the purpose of subclause (1)(b), **non-active default member** means a person who—
- (a) was allocated to a scheme under sections 50 and 51 of the Act; and
 - (b) has not chosen to be a member of a KiwiSaver scheme by contracting directly with the provider of a KiwiSaver scheme to become a member of that scheme.

Subpart 2—Requirement to reallocate and transfer

9 Application of regulation 10

Regulation 10 applies—

- (a) in relation to every old default scheme; but
- (b) for each old default scheme, only after the 2021 terminating event for the scheme.

10 Transferring default members must be reallocated and transferred

Every transferring default member of an old default scheme must be reallocated and transferred to a new default scheme.

11 How reallocation and transfer must be carried out

Every reallocation and transfer required by regulation 10 must be carried out in accordance with the method, terms, and procedures that Schedule 1 provides for.

12 What providers of old default schemes must do

- (1) This regulation applies to the provider of an old default scheme after the 2021 terminating event for the scheme.
- (2) The provider must, in respect of the old default scheme,—
 - (a) produce to the Commissioner, in accordance with Schedule 1, the list specified in clause 2(1) of that schedule; and
 - (b) do the acts and things specified in clause 7(1) of Schedule 1 in accordance with that schedule; and
 - (c) carry out any other prescribed procedures that apply to the provider to facilitate or enable the transfer of the scheme's transferring default members to a new default scheme in accordance with regulations 10 and 11.
- (3) This regulation is subject to regulation 13.

13 Limits to application of regulation 12 where all members are or become active KiwiSaver members

- (1) Subclause (2) applies to the provider of an old default scheme if all of the scheme's members are, or become, active KiwiSaver members.

- (2) Regulation 12 does not apply, or no longer applies, to the provider in respect of the scheme to the extent that regulation 12 would otherwise require the provider to—
- (a) report to any person; or
 - (b) produce any papers, documents, or records.
- (3) In this regulation, a member of a scheme is an **active KiwiSaver member** if the member became a member of the scheme by some manner other than under section 52 of the Act.

14 What providers of new default schemes must do

A provider of a new default scheme to which members are, or are to be, transferred from an old default scheme in accordance with regulation 10 must carry out any prescribed procedures that apply to the provider to facilitate or enable the transfer of those members to the provider's new default scheme.

Part 2

Related amendments to KiwiSaver Regulations 2006

15 Principal regulations

This Part amends the KiwiSaver Regulations 2006.

16 New regulation 29A and cross-heading inserted

After regulation 29, insert:

*Significant breach of instrument of appointment (providers of default
KiwiSaver schemes)*

29A Matters that may be treated by Minister as significant breach of instrument of appointment for purposes of section 137(2) of Act

- (1) Subclause (2) applies if—
- (a) the Minister is satisfied that—
 - (i) the terms and conditions of an instrument of appointment with a provider of a default KiwiSaver scheme require the provider to comply with a direction that a Minister, or the Commissioner, has given to the provider; and
 - (ii) the provider has not complied with the direction (wholly or in part); and
 - (iii) the non-compliance risks impeding or unreasonably delaying a reallocation or transfer that is, or will be, required by regulations made under section 230 of the Act; or
 - (b) the Minister is satisfied that—

- (i) the terms and conditions of an instrument of appointment with a provider require the provider to comply with regulations made under section 230(1)(ba), (c), or (d) of the Act; and
 - (ii) the provider has not complied with those regulations (wholly or in part); and
 - (iii) the non-compliance risks impeding or unreasonably delaying a reallocation or transfer that is, or will be, required by those regulations.
- (2) For the purposes of section 137(2) of the Act, the Minister may treat the non-compliance by the provider as a significant breach of the provider's instrument of appointment.
- (3) In this regulation, **instrument of appointment** means an instrument of appointment under section 132 of the Act.

17 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 2 of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

Schedule 1

Method of determining reallocation and transfer matters

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1 Outline

- (1) This schedule provides for the method and terms of, and procedures for, a reallocation and transfer required by regulation 10.
- (2) This clause is only a guide to the general scheme and effect of this schedule.

2 Provider of old default scheme provides transfer list

- (1) The provider of an old default scheme provides to the Commissioner a list of the transferring default members (the **transfer list**).
- (2) The date on which the transfer list must be provided is—
 - (a) 1 December 2021; or
 - (b) if a later date is determined by the Commissioner by direction to the provider by 30 November 2021, the later date.
- (3) The Commissioner may not determine a date later than 15 January 2022 for the purpose of subclause (2)(b).
- (4) *See* clause 9 if the instrument of appointment for an old default scheme is revoked before 30 November 2021.
- (5) The transfer list must contain the information determined by direction to the provider in accordance with clause 11.
- (6) The information in the transfer list must be provided in the order (for example, by tax number or surname) or form determined by direction to the provider in accordance with clause 11.
- (7) A direction for the purpose of subclause (5) or (6) must be given to the provider at least 14 days before the date for provision of the transfer list.

3 Commissioner reallocates members on transfer list on sequential basis

- (1) The Commissioner, as soon as practicable after receiving the transfer list, reallocates the transferring default members on the list sequentially to the new default schemes.
- (2) The Commissioner may correct any error or omission in the transfer list of which the Commissioner is aware.
- (3) Subclause (4) applies if a reallocation occurs that is not strictly sequential because—
 - (a) 1 or more people on the transfer list did not meet the definition of transferring default member when the list was compiled or provided, or when the reallocation occurred; or
 - (b) there were other errors or omissions in the list.

- (4) The reallocation is not invalid merely because of the things described in subclause (3)(a) or (b).

4 Commissioner gives notice to reallocated transferring default members

The Commissioner, as soon practicable after the reallocation of a transferring default member under clause 3,—

- (a) gives the member notice of the reallocation, including the following information:
- (i) why the reallocation has occurred; and
 - (ii) the name and address of the provider of the new default scheme to which the member has been reallocated; and
 - (iii) the name of the default investment product of that scheme; and
- (b) sends the member the product disclosure statement relating to that product in that scheme.

5 Commissioner gives notice to providers of new default schemes

The Commissioner, as soon as practicable after a reallocation in accordance with clause 3, gives notice of the reallocation to each provider of a new default scheme to which 1 or more transferring default members have been reallocated, including the following information:

- (a) that the member or members have been reallocated to the scheme in accordance with these regulations; and
- (b) each member's name, address, date of birth (if known to the Commissioner), and tax file number, the name and address of the provider of the old default scheme from which each member is transferring, and any other personal information that the Commissioner considers relevant to facilitate or enable the transfer.

6 Commissioner gives notice to providers of old default schemes

- (1) Subclause (2) applies in respect of—
- (a) each provider (**A**) of an old default scheme from which 1 or more transferring default members have been reallocated in accordance with these regulations; and
 - (b) each such transferring default member (**B**).
- (2) The Commissioner, as soon as practicable after the reallocation of B in accordance with clause 3, gives A notice of the reallocation of B, including the following information:
- (a) that B has ceased to be a member of A's old default scheme and the effective date of the reallocation; and
 - (b) the name and address of the new default scheme to which B has been reallocated, and the name of the provider of that scheme; and

- (c) that A must transfer the funds and information required to be transferred in accordance with clause 7.

7 Provider of old default scheme transfers funds and information

- (1) The provider (**A**) of an old default scheme who receives notice under clause 6 in respect of a person who is a transferring default member (**B**)—
 - (a) transfers B's accumulation to B's new default scheme; and
 - (b) gives notice to B of the amount so transferred; and
 - (c) gives notice to the provider of B's new default scheme, in respect of B and the old default scheme, of the matters in section 56(3)(c) of the Act.
- (2) The time frame for A to complete every matter in subclause (1) in respect of B is,—
 - (a) unless paragraph (b) applies,—
 - (i) within 75 days of receiving the notice under clause 6; or
 - (ii) if a longer time frame is determined by the FMA by notice to A, within the longer time frame; but
 - (b) if A receives, from the provider of B's new default scheme, notice that clause 8 applies in relation to B, within 5 working days of receiving that notice.

FMA determination of longer time frame

- (3) For the purpose of subclause (2)(a)(ii), the FMA may not determine a time frame that is longer than within 110 days of A receiving the notice under clause 6.
- (4) Clauses 10 and 12 apply to the FMA for the purpose of subclause (2)(a)(ii).

Miscellaneous

- (5) See clause 9 if the instrument of appointment for the old default scheme is revoked before 30 November 2021.
- (6) In this clause, **B's new default scheme** means the new default scheme to which B has been reallocated, as advised to A in the notice under clause 6.

8 Applications for withdrawal received by new provider before funds transferred

- (1) This clause applies if, before funds are transferred under clause 7 in relation to a transferring default member (**B**), the new provider—
 - (a) receives in respect of B an application of a kind described in subclause (2), in the circumstances described in that subclause (if any); or
 - (b) is required under any legislation to release funds from B's KiwiSaver scheme in accordance with that legislation.
- (2) The applications, and the circumstances (if any), are—

- (a) an application for a withdrawal under clause 4 or 4B of the KiwiSaver scheme rules (which relate to lock-in of funds):
 - (b) an application for a withdrawal under clause 8 of the KiwiSaver scheme rules (which relates to the purchase of a first home) in circumstances where B is a qualifying person (as defined in regulation 30 of the Kiwi-Saver Regulations 2006):
 - (c) an application for a withdrawal under clause 9 of the KiwiSaver scheme rules (which relates to withdrawal on death):
 - (d) an application, made in accordance with clause 13 of the KiwiSaver scheme rules, for a withdrawal under any of clauses 10, 12, and 12B of the rules (which relate to significant financial hardship, serious illness, or life-shortening congenital conditions):
 - (e) an application, made in accordance with clause 14(3) of the KiwiSaver scheme rules, for a withdrawal under clause 14(1) of the rules (which relates to permanent emigration) in circumstances where clause 14B of the rules (permanent emigration to Australia) does not apply:
 - (f) an application, made in accordance with clause 14C(4)(a) to (c) of the rules, for a withdrawal under clause 14C of the rules (which relates to tax liability on foreign superannuation withdrawal).
- (3) If this clause applies, the new provider must, as soon as is reasonably practicable, give notice to the provider of B's old default scheme advising that provider that this clause applies in relation to B.
 - (4) If this clause applies because of subclause (1)(a), it is not necessary for the new provider to do any of the following before giving a notice under this clause:
 - (a) be satisfied that the application may be made, if reasonable grounds exist for believing the application may be able to be made:
 - (b) require verification of any medical matter asserted, or documents, things, or information produced, in support of the application:
 - (c) determine the application.
 - (5) In this clause,—

B's old default scheme means the old default scheme from which B has been reallocated in accordance with these regulations

new provider means the provider of the new default scheme to which B has been reallocated in accordance with these regulations.
 - (6) See clause 12 (which relates to the giving of notices).

9 What happens if 2021 terminating event for old default scheme happens before 30 November 2021

- (1) This clause applies in relation to an old default scheme if the instrument of appointment for the scheme is revoked before 30 November 2021.

Date and time frame

- (2) For the purpose of clause 2, the date on which the transfer list must be provided is—
- (a) the day after the revocation date; or
 - (b) if a later date is determined by the Commissioner by direction to the old provider by the revocation date, the later date.
- (3) The time frame for completing every matter in clause 7(1) in respect of every person who is a transferring default member is—
- (a) within 75 days of receiving the notice under clause 6; or
 - (b) if a longer time frame is determined by the FMA by notice to the old provider, within the longer time frame.
- (4) Despite subclause (3), if the old provider receives, from a new provider, notice that clause 8 applies in relation to a transferring default member (**B**), the time frame for completing every matter in clause 7(1) in respect of B is within 5 working days of receiving the new provider's notice.

Determination of later date or longer time frame

- (5) The Commissioner may not determine a date later than 15 January 2022 for the purpose of subclause (2)(b).
- (6) For the purpose of subclause (3)(b), the FMA may not determine a time frame that is longer than within 110 days of the old provider receiving the notice under clause 6.
- (7) Clauses 10 and 12 apply to the FMA for the purpose of subclause (3)(b).

Miscellaneous

- (8) Subclause (2) applies despite clause 2(2) and subclauses (3) and (4) apply despite clause 7(2).
- (9) In this clause,—

new provider, in relation to a transferring default member, means the provider of the new default scheme to which the transferring default member has been reallocated in accordance with these regulations

old provider means the provider of the scheme referred to in subclause (1).

10 FMA notice of longer time frame

- (1) The FMA may give a notice for the purpose of clause 7(2)(a)(ii) or 9(3)(b) only if the FMA considers that—
- (a) a longer time frame is,—
 - (i) having regard to market conditions, in the interests of transferring default members or members of the overall KiwiSaver scheme; or
 - (ii) otherwise necessary or desirable in order to facilitate or enable the relevant transfer; and

- (b) the longer time frame is no greater than is reasonably necessary to address the matters that gave rise to it.
- (2) A notice given under this clause must—
 - (a) relate to all transferring default members who have yet to transfer; and
 - (b) be given to all providers of old default schemes with transferring default members who have yet to transfer.
- (3) Despite subclause (2)(b), if 1 or more instruments of appointment for an old default scheme are revoked before 30 November 2021, the notice given to the providers of those schemes must be adjusted to ensure that the longer time frame, in each case, complies with clause 9(6).
- (4) In this clause, a transferring default member has **yet to transfer** if clause 7(1)(a) is not completed in respect of that member.

11 Directions determining further technical details of reallocation and transfer matters

- (1) The purpose of this clause is to provide for the Minister or the Commissioner to determine any further technical details (rather than matters of general principle) of the method or terms of, or procedures for, any reallocation and transfer required by regulation 10.
- (2) The Minister or the Commissioner may, by direction to the provider of an old default scheme, determine (in relation to the provider and the scheme) those further details.
- (3) Before issuing a direction under this clause, the Minister or the Commissioner must be satisfied that the direction—
 - (a) is necessary or desirable in order to facilitate or enable the relevant transfer; and
 - (b) is not inconsistent with this schedule (including the purpose of this clause), regulation 13, or any other legislation.
- (4) Further details may include or relate to—
 - (a) information to be provided or notices to be given;
 - (b) dates or time frames for providing information, giving notices, or doing other acts or things;
 - (c) notices or other communications in the event that, before completion of a reallocation and transfer, a person on a transfer list chooses their own KiwiSaver scheme;
 - (d) steps incidental to those set out in this schedule.
- (5) If any details are to apply to the provider of a new default scheme in order to facilitate or enable the transfer of members to that scheme, the Minister or the Commissioner must give a copy of the direction to that provider.

- (6) In this clause, **Minister** means the Minister of Commerce and Consumer Affairs.

12 Giving of notices

Section 218 of the Act (which provides, among other things, for notices to be given in writing) applies to the giving of notices (other than the giving of notices to the Commissioner) under these regulations.

Schedule 2
**New Part 2 inserted into Schedule 1AA of KiwiSaver Regulations
2006**

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Part 2
**Provision relating to KiwiSaver (Reallocation and Transfer of
Default Members) Regulations 2021**

- 2 Transitional provision concerning form of annual return for old default schemes for 12-month period ending 31 March 2022**
- (1) For a KiwiSaver scheme that is an old default scheme (within the meaning of regulation 6 of the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021), the annual return that relates to the 12-month period ending on 31 March 2022 must be in form 2 of Schedule 1.
- (2) Subclause (1) applies despite regulation 9(1).

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, which come into force on 1 November 2021 and are revoked on 1 December 2022, are made under the KiwiSaver Act 2006 (the **Act**) and relate to default KiwiSaver schemes. The regulations are mainly transitional in nature.

Broadly, default KiwiSaver schemes are schemes to which persons are allocated if they enrol in or opt into KiwiSaver without choosing a KiwiSaver provider. If, after a short period of being allocated to a scheme, a person does not apply to become a member of a scheme, the person will become a default member of the default KiwiSaver scheme to which they were allocated. They will continue to be a default member of that scheme unless they apply to become a member of that scheme or another KiwiSaver scheme.

Providers of default KiwiSaver schemes are appointed to provide the default KiwiSaver scheme for a specified term under an instrument of appointment. *Part 1* of these regulations recognises that the current instruments of appointment are due to expire. Some schemes (the **old default schemes**) will not continue as default KiwiSaver schemes.

Regulation 4 sets out the purpose of *Part 1*, which is to reallocate and transfer default members of old default schemes to new default schemes.

Regulations 5 to 8 relate to interpretation. *Regulation 8* defines the default members of old default schemes who will be reallocated and transferred (the **transferring default members**).

Subpart 2 of Part 1 sets out the requirement to reallocate and transfer the transferring default members and things that providers of old default schemes and of new default schemes must do to facilitate or enable that transfer. *Schedule 1* provides for the method, terms, and procedures for the reallocation and transfer.

Part 2 amends the KiwiSaver Regulations 2006 to—

- provide for matters that the Minister (as defined in section 4 of the Act) can treat as a significant breach of an instrument of appointment for the purposes of section 137(2) of the Act (which may allow the Minister to revoke the instrument of appointment). The matters are related to non-compliance that impedes or unreasonably delays a reallocation or transfer:
- clarify the form of annual return to be used by an old default scheme.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment and the Treasury produced a regulatory impact statement on 27 November 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

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

- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-transfer-kiwisaver-members-between-providers-default-funds>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 30 September 2021.

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

Notes

1 *General*

This is a consolidation of the KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

KiwiSaver (Reallocation and Transfer of Default Members) Regulations 2021 (LI 2021/283): regulation 3