



CONSULTATION DOCUMENT

CONSULTATION ON AMENDMENTS TO REGULATIONS ISSUED UNDER THE RETIREMENT PENSIONS ACT

[MFSA REF: 02/2019]

4th February 2019

Closing Date: 25th February 2019

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

1. Purpose

- 1.1 On the 22nd October 2018, the MFSA issued a Consultation Document highlighting the main changes proposed to be carried out to the Retirement Pensions Act (Cap. 514), primarily as a consequence of transposing Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast), (the “IORP II Directive”). The transposition of the IORP II Directive also necessitates amendments to subsidiary legislation, which include, regulations issued under the Retirement Pensions Act. Following the said Consultation on the proposed amendments to the Retirement Pensions Act (Chapter 514 of the Laws of Malta), the MFSA is issuing for consultation the proposed amendments to regulations issued under the Retirement Pensions Act and new regulations transposing specific provisions of the IORP II Directive.
- 1.2 The documents circulated by the MFSA for the purposes of consultation are in draft form and consist of the following proposals:
1. Retirement Pensions (Control of Assets) (Amendment) Regulations, 2019;
 2. Retirement Pensions (Exemption) (Amendment) Regulations, 2019;
 3. Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019;
 4. Retirement Pensions (Defined Benefit Retirement Schemes) (Amendment) Regulations, 2019;
 5. Retirement Pensions (General Provisions of Supervision) Regulations, 2019;
 6. Retirement Pensions (Transitional Provisions on Back-Office Administrators) Regulations, 2019;
 7. Retirement Pensions (Transitional Provisions) (Revocation) Regulations, 2019.
- 1.3 Any comments and feedback are to be addressed to the Insurance and Pensions Supervision Unit by email on ipsu@mfsa.com.mt by not later than the **25th February 2019**.

2. Proposed Regulations to be issued under the Retirement Pensions Act

2.1 *Retirement Pensions (Control of Assets) (Amendment) Regulations, 2019*

These regulations amend regulations 15 and 17 of the Retirement Pensions (Control of Assets) Regulations, 2015. It is proposed to amend regulation 15 in order to update the references to the EU Directives and bring them in line with the provisions of Article 33 of the IORP II Directive. It is also being proposed to amend regulation 17 in order to include the oversight function, as proposed in the Consultation Document dated the 22nd October 2018 (MFSA Ref. 14/2018).

2.2 Retirement Pensions (Exemption) (Amendment) Regulations, 2019

It is being proposed to amend regulations 3 and 4 of these regulations in order to update the references to the EU Directives and to bring them in line with the provisions of Articles 32 and 33 of the IORP II Directive.

As stated on the Consultation paper of the 22nd October 2018, it is being proposed to delete the concept of *back office administrators* from the Retirement Pensions Act. Therefore, in view of this proposal, in so far as regulation 5 is concerned, it is being proposed to delete the exemption from recognition of back office administrators. Thus, any back office administrators who have been exempt from recognition by the competent authority may not continue operating in this manner.

2.3 Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019

The IORP II Directive clarifies the procedures to facilitate cross-border development by means of an enhanced procedure for cross-border activities and a new procedure for cross-border transfers, as laid down in Articles 11 and 12 of the IORP II Directive, respectively. This proposed new Legal Notice transposes Article 6 (in part) and Articles 11 and 12 of the IORP II Directive. In the context of cross-border activities, the proposed new regulations make it easier for an occupational retirement scheme to operate a pension scheme that is subject to the social and labour law of another Member State or EEA State and for assets to be transferred across Member States. It also clarifies the procedure in the cases where an occupational retirement scheme offers its services in other Member States, as well as the respective roles of the competent authorities of the home Member States and host Member States.

With regards to cross-border transfers, the new regulations establish a procedure for the transfer of all or part of a pension scheme's liabilities between occupational pension schemes in two different Member States or EEA States. Such transfer is subject to authorisation from the competent authority of the home Member State of the receiving IORP, after it has received the consent of the competent authority of the home Member State of the transferring IORP. In addition, in terms of Article 12(3) of the IORP II Directive, the transfer and its conditions are also subject to prior approval by the members and beneficiaries concerned or their representatives and by the sponsoring undertaking, where applicable.

The proposed Legal Notice also revokes the current Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2015.

2.4 Retirement Pensions (Technical Provisions) Regulations, 2019

It is being proposed to amend the title of the current Retirement Pensions (Defined Benefit Schemes) Regulations, 2015 to Retirement Pensions (Technical Provisions) Regulations, 2019. These regulations shall apply to occupational retirement schemes and personal retirement schemes which provide cover against biometric risks or guarantee a given level of investment performance or level of benefits. These regulations will transpose some provisions of Article 13 and Article 14 of the IORP II Directive. The regulations will also contain requirements relating to the under-provision or over-provision of technical funding requirements.

2.5 Retirement Pensions (General Provisions of Supervision) Regulations, 2019

This set of new regulations transposes a number of obligations to be complied with by the MFSA for the purposes of the IORP II Directive. The purpose of these regulations is to transpose and implement Articles 19(2), 45, 47, 49(2), 50 and 51 of the said Directive. These regulations lay down the main objective and scope of prudential supervision, as well as the general principles of prudential supervision found in the IORP II Directive. These proposed regulations also contain provisions for the supervisory review process of occupational retirement schemes and lists the information to be provided by occupational retirement schemes to the MFSA for supervisory purposes.

2.6 Retirement Pensions (Transitional Provisions on Back-Office Administrators) Regulations, 2019

Following the proposal of the MFSA of the proposed deletion of the concept of back office administration from the Retirement Pensions Act, it is being proposed to issue transitional provisions on back-office administrators. In terms of the proposed regulations, any person, who on the date of coming into force of these proposed regulations was in possession of a recognition issued under article 7 of the Act, shall, surrender its certificate of recognition to the MFSA by no later than twelve months from the coming into force of these regulations.

2.7 Retirement Pensions (Transitional Provisions) (Revocation) Regulations, 2019

These Retirement Pensions (Transitional Provisions) Regulations, 2015 provide that any scheme or arrangement, retirement fund, or any person registered in terms of the Special Funds (Regulation) Act, shall within the period of six months apply for a licence under the Retirement Pensions Act. In view of the fact that the time frames in this regulation have lapsed, it is being proposed to revoke the Retirement Pensions (Transitional Provisions) Regulations, 2015, by means of the Retirement Pensions (Transitional Provisions) (Revocation) Regulations, 2019.