

REPORT ON THE CONSULTATION PROCESS FOR THE AMENDMENTS TO REGULATIONS IN TERMS OF FINANCIAL SECTOR REGULATION ACT, 2017

Process followed

Draft amendments to the Financial Sector Regulations, made in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), and which were published in Government Notice No. R405 of 29 March 2018, are set out in the Schedule, were published for comment on 18 March 2019, and were also submitted to Parliament on that date. The period allowed for comment was until close of business on 27 March 2019, in accordance with section 288(8) of the FSRA.

Comments received and responses

The following comments were received during the consultation process:

Provision	Commentator	Comment	National Treasury Response
Proposed regulation 4B	Discovery Health	<p>Our comments are limited to draft regulation 4B, which enables the Council for Medical Schemes to recover costs related to the exercise of powers in terms of Chapter 9 of the FSRA, as contemplated in section 129(2) of the FSRA.</p> <p>The existing provisions with regard to the cost of inspections were contained in the following extracts of the (repealed) Inspection of Financial Institutions Act (No 80 of 1998) as follows:</p> <p>(11) All expenses necessarily incurred by and the remuneration of any inspector appointed under section 2 may be recovered from— (a) a person who has applied for an inspection of an institution, and the Registrar may require such person to furnish such security as the Registrar may deem satisfactory and sufficient to cover such</p>	<p>The National Treasury notes the concerns raised, and commits to engaging further with stakeholders and the Council for Medical Schemes, both regarding the recovery of the costs of inspections by the Council for Medical Schemes (CMS), as well as regarding the legal framework for the conduct of inspections by the CMS.</p> <p>However, the need of the CMS to recoup funding for the costs of investigations, which previously</p>

		<p>expenses and remuneration; or (b) the institution being inspected, if the Registrar so decides, after having considered the results of the inspection. [as amended 2014] (c) any person, when it appears after considering the outcome of an inspection, that such person was knowingly a party to the carrying on of the affairs of the institution in a manner that constituted an irregularity, non-compliance or contravention.</p> <p>For clarity, new regulation 4B reads: Recovery of costs by Council for Medical Schemes</p> <p>4B When the Council for Medical Schemes exercises powers in terms of Chapter 9 of the Act as contemplated in section 129(2) of the Act, the Registrar of Medical Schemes may recover costs associated with the exercise of those powers from- (a) the medical scheme that is the subject of the exercise of the powers, if the Registrar so decides, after having considered the results of the exercise of the powers; or (b) any person, when it appears, after considering the outcome of the exercise of the powers, that the person was knowingly a party to the carrying on of the affairs of the medical scheme in a manner that constituted an irregularity, non-compliance or contravention. Discovery</p>	<p>was provided for under section 11 the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998) must be urgently provided for on an interim basis, through the proposed regulation 4B.</p> <p>Regulation 4B is intended as a strictly temporary interim measure, which will be replaced as soon as reasonably practicable by amendments to primary legislation.</p>
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		<p>matter at industry level, in order to:</p> <ol style="list-style-type: none"> 1. Develop guidelines on the reasons for initiating inspections and the manner in which inspections are conducted. 2. Provide adequate guidance regarding the use of appropriately experienced resources, as well as the costs that schemes and entities under inspection may expect to incur, as schemes cannot be expected to incur unlimited liabilities over which they have no control. 3. Provide clarity as to why part (a) of the provision under Section 11 of the repealed Inspection of Financial Institutions Act has been omitted. <p>To this end, Discovery Health proposes that the Financial Sector Conduct Authority (FSCA) considers a further process of medical scheme industry consultation together with the Council for Medical Schemes, aimed at developing a clear set of guidelines on the process aspects of inspections and the related cost implications for medical schemes.</p> <p>We look forward to the opportunity for further engagement on this topic.</p>	
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Necessity for following the urgent regulation making process in terms of section 288(7) and (8) of the FSRA

As these amendments to the Financial Sector Regulations must be in place prior to the end of the financial year on 31 March 2019, it was necessary for these amendments to be processed in terms of the urgent process provided for in section 288(7) and (8) of the FSRA. If the usual process for making regulations in terms of section 288(4) and (6) of the FSRA were followed, the proposed regulations or amendments must be published for public comment for a period of six weeks. Subsequently, section 288(4)(b) and (5)(b) require that the regulations must be tabled in Parliament for 30 days while Parliament is in session. It would, therefore, not have been possible for these amendments to be in place by 31 March 2019. The urgent process in section 288(7) and (8) permits the draft regulations to be simultaneously published for public comment and submitted to comment for a period of 7 days, whether or not Parliament is in session.

The funding of the operations of the Tribunal and the Council for Medical Schemes would be seriously affected, and their ability to serve financial customers would be significantly compromised, if the Amendments to the Regulations are not in place by 31 March 2019. It is also essential that the accounting authority for the statutory ombuds is clarified, so that financial accountability and transparency is ensured for the 2019/20 financial year. The purpose of these amendments to the Financial Sector Regulations would be defeated, if the amendments to the Financial Sector Regulations were not made on an urgent basis in terms of section 288(7) and (8) of the FSRA.