

**Reprint
as at 22 September 2011**



**Social Security (Income and
Cash Assets Exemptions:
Superannuation Schemes)
Regulations 2008**

(SR 2008/68)

Social Security (Income and Cash Assets Exemptions: Superannuation Schemes) Regulations 2008: revoked, on 22 September 2011, by clause 47 of the Social Security (Income and Cash Assets Exemptions) Regulations 2011 (SR 2011/287).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 17th day of March 2008

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 132 of the Social Security Act 1964, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Social Development.

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Regulations

- 1 Title**
These regulations are the Social Security (Income and Cash Assets Exemptions: Superannuation Schemes) Regulations 2008.
- 2 Commencement**
These regulations come into force on 1 May 2008.
- 3 Interpretation**
In these regulations, unless the context otherwise requires,—
Act means the Social Security Act 1964
contribution means any contribution to a scheme (for example,—
(a) an employer contribution (for example, a compulsory employer contribution); or
(b) any Crown contribution)
Crown contribution,—
(a) in relation to a KiwiSaver scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and
(b) in relation to a specified non-KiwiSaver scheme, means any Crown contribution
expected time of retirement, in relation to a member of a non-KiwiSaver scheme, means the member's expected age or date of retirement as defined in the provisions of the scheme
fee subsidy,—
(a) in relation to a KiwiSaver scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and

- (b) in relation to a specified non-KiwiSaver scheme, means any fee subsidy

KiwiSaver scheme and **KiwiSaver scheme rules** have the same meanings as in section 4(1) of the KiwiSaver Act 2006

member's interest, in relation to a member of a specified non-KiwiSaver scheme, means the total of—

- (a) the member's contributions; and
(b) any employer contributions (vested or unvested) in respect of the member; and
(c) any fee subsidies paid in respect of the member; and
(d) any Crown contribution paid in respect of the member

net value, in relation to a member's interest, means the value of the member's interest once any other appropriate debits and credits have been made to account for things like fees, permitted withdrawals or permitted proposed withdrawals, and positive and negative returns

non-KiwiSaver scheme means a scheme that is not a KiwiSaver scheme, but is registered under the Superannuation Schemes Act 1989

permitted, in relation to a withdrawal or proposed withdrawal from a scheme, means that the withdrawal is, or the proposed withdrawal if it were provided would be, permitted under the provisions of the scheme

proposed withdrawal means a withdrawal that has been applied for, but has not yet been provided

provision, in relation to a scheme, means a provision (express or implied) of either or both of the following:

- (a) the deed that established the relevant trust or (as the case may be) the Act of the Parliament of New Zealand that constituted the relevant arrangement;
(b) any rules of the scheme

qualifying lock-in clause, in relation to a KiwiSaver scheme, means the provision of the scheme implied in its trust deed under section 126 and clause 4 (lock-in of funds to KiwiSaver end payment date) of Schedule 1 of the KiwiSaver Act 2006

and, in relation to a non-KiwiSaver scheme, means a provision of the scheme that—

- (a) prevents a member of the scheme from making or receiving a withdrawal from the scheme until either or both of the following apply to the member:
 - (i) he or she reaches the expected time of retirement;
 - (ii) he or she leaves before reaching the expected time of retirement—
 - (A) the employment in respect of which the scheme was constituted or established; or
 - (B) any employment covered by the scheme; and
- (b) may, but need not, be, or be accompanied by another provision of the scheme that is, a standard withdrawals clause

scheme means a superannuation scheme (for example, a KiwiSaver scheme or a non-KiwiSaver scheme)

specified non-KiwiSaver scheme means a non-KiwiSaver scheme the provisions of which include a qualifying lock-in clause

standard withdrawals clause, in relation to a scheme, means a provision of the scheme that permits a member of the scheme to make or receive a withdrawal from the scheme in circumstances that are, or are essentially, the same as those specified in all or any of the following clauses of Schedule 1 of the KiwiSaver Act 2006:

- (a) clause 8 (purchase of a first home):
- (b) clause 10 (significant financial hardship):
- (c) clause 12 (serious illness)

withdrawal, in relation to a member and a KiwiSaver scheme or non-KiwiSaver scheme,—

- (a) includes any benefit provided from, and debited against the member's interest in, the scheme; but
- (b) does not include a permitted withdrawal or permitted proposed withdrawal that is a transfer (with or without the member's consent) from the scheme to another KiwiSaver scheme or non-KiwiSaver scheme; and

- (c) for the purposes of regulations 4(3) and 5(3), does not include a withdrawal made or received in accordance with a standard withdrawals clause.

4 Specified items declared not to be income

- (1) The items of income specified in subclause (2) are not a person's income for the purposes of the Act.
- (2) The items are the following paid or made on or after 1 May 2008 in respect of the person as a member of a KiwiSaver scheme or specified non-KiwiSaver scheme:
 - (a) employer contributions and any Crown contribution; and
 - (b) fee subsidies; and
 - (c) credits for positive returns.
- (3) However, subclause (1) applies in respect of a KiwiSaver scheme or specified non-KiwiSaver scheme only while a qualifying lock-in clause prevents the person, as a member of the scheme, from making or receiving a withdrawal from the scheme.

5 Specified item declared not to be cash assets

- (1) The item of cash assets specified in subclause (2) is not a person's cash assets for the purposes of the Act.
- (2) The item is the net value of the person's member's interest, on or after 1 May 2008, in a specified non-KiwiSaver scheme.
- (3) However, subclause (1) applies in respect of a specified non-KiwiSaver scheme only while a qualifying lock-in clause prevents the person, as a member of the scheme, from making or receiving a withdrawal from the scheme.

6 Effect of election to defer receipt of benefits

- (1) This regulation applies to a person who, as a member of a KiwiSaver scheme or specified non-KiwiSaver scheme, has exercised a right under the provisions of the scheme to elect to defer receipt of any benefit that he or she is eligible to receive under the scheme.
- (2) A qualifying lock-in clause must for the purposes of regulations 4(3) and 5(3) be treated as not preventing the person, as

a member of the scheme, from making or receiving a withdrawal from the scheme.

Diane Morcom,
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 May 2008, are made under the Social Security Act 1964 (the **Act**). They declare certain items of income or cash assets not to be a person's income or cash assets for the purposes of the Act. The items are related to certain superannuation schemes, namely KiwiSaver schemes, and non-KiwiSaver schemes that are registered under the Superannuation Schemes Act 1989 and the provisions of which include a qualifying lock-in clause. The exemptions cease to apply once a qualifying lock-in clause no longer prevents withdrawals (other than those under a standard withdrawals clause) from the scheme. (A qualifying lock-in clause is treated as no longer preventing withdrawals of that kind if the person has exercised a right under the scheme's provisions to elect to defer receipt of any benefit that he or she is eligible to receive under the scheme.)

The exempted items of a person's income are the following paid or made on or after 1 May 2008 in respect of the person as a member of a KiwiSaver scheme or specified non-KiwiSaver scheme:

- employer contributions, including compulsory employer contributions, and any Crown contribution (but not also the person's member's contributions); and
- fee subsidies; and
- credits for positive returns.

The exempted item of a person's cash assets is the net value of the person's member's interest, on or after 1 May 2008, in a specified non-KiwiSaver scheme. (Cash assets, as used in specified provisions relating to the accommodation supplement, includes "money with-

drawn from a KiwiSaver scheme registered under the KiwiSaver Act 2006”, but “does not include any contributions to, or any member’s interest in, any KiwiSaver scheme that is registered under the Kiwi-Saver Act 2006”: paragraphs (a)(ia) and (ab) of the definition of cash assets in section 61E of the Act.)

A member’s interest, for a member of a specified non-KiwiSaver scheme, means the total of the following:

- the member’s contributions; and
- any employer contributions (vested or unvested) in respect of the member; and
- any fee subsidies paid in respect of the member; and
- any Crown contribution paid in respect of the member.

The net value of a member’s interest is its value once any other appropriate debits and credits have been made to account for things like fees, permitted withdrawals or permitted proposed withdrawals, and positive and negative returns. A permitted withdrawal or permitted proposed withdrawal is a withdrawal that is, or a proposed withdrawal that if it were provided would be, permitted under the provisions of the relevant specified non-KiwiSaver scheme.

A withdrawal from a KiwiSaver scheme or non-KiwiSaver scheme includes any benefit provided from, and debited against the member’s interest in, the scheme, but does not include a transfer (with or without the member’s consent) from the scheme to another Kiwi-Saver scheme or non-KiwiSaver scheme.

That item, or a similar item, of cash assets is also—

- an asset exempt from means assessment under Part 4 of the Act, because of the related exemptions in clause 4 of Part 2 of Schedule 27 of the Act and regulation 10(1)(i) of the Social Security (Long-term Residential Care) Regulations 2005; and
- excluded from cash assets used in determining eligibility for temporary additional support, because of the related exclusion in regulations 8(3)(h) and 8B of the Social Security (Temporary Additional Support) Regulations 2005.

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Notes

1 *General*

This is a reprint of the Social Security (Income and Cash Assets Exemptions: Superannuation Schemes) Regulations 2008. The reprint incorporates all the amendments to the regulations as at 22 September 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Social Security (Income and Cash Assets Exemptions) Regulations 2011 (SR 2011/287): regulation 47
