

Exemption enabling personalised digital advice

This information sheet explains the exemption that allows approved providers to provide personalised digital advice services – also known as ‘robo-advice’ – under the current financial advice regime.

If you would like to apply for the exemption, please read this information sheet along with our [application guide](#).

If you are a provider thinking about offering personalised digital advice services, engage with us early.

The exemption

The Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 (the ‘exemption’) permits financial adviser entities (‘providers’) to provide personalised digital advice services to retail clients. We granted this exemption because we believe it will improve consumer access to financial advice and promote innovation, while providing consumer protection safeguards – promoting the overall purposes of the Financial Advisers Act 2008 (‘FA Act’).

Currently, the FA Act impedes the development of personalised digital advice models in the New Zealand market, as it requires personalised financial advice to be given by a ‘natural person’. The exemption overcomes this rigidity.

What is a digital advice service?

A digital advice service is a facility to give automated personalised financial advice or provide an automated personalised investment planning service through a computer program using algorithms. The service is usually provided through a website or mobile app. In the exemption notice this is called a ‘digital advice facility’.

The exemption can cover a wide range of personalised digital advice services, ranging from basic tools providing advice that is targeted or narrow in scope, to ‘full-scale’ end-to-end investment platforms.

A digital advice service may be fully automated, such as a website-only platform. Or it may be a ‘hybrid’ model that has some human involvement in the advice process, for example, processes where clients interact with a human if they have questions or need assistance.

The exemption does not cover situations where human advisers use digital tools to assist them to formulate their own financial advice. Human advisers are permitted to do this under the existing FA Act framework. An adviser giving their own financial advice needs to comply with the relevant requirements of the FA Act and (if applicable) the Code of Professional Conduct for authorised financial advisers (the ‘Code’). This includes situations where an adviser supplements advice provided through a personalised digital advice service with their own financial advice, or presents advice generated by a digital tool as their own financial advice.

Who is the exemption for?

The exemption is for providers who want to offer personalised services to retail clients through a digital advice service.

A personalised service is a financial adviser service given to a named client or a client that is otherwise readily identifiable that takes into account a person's individual situation or goals. No personalised service is provided where the user of a digital advice tool is not identifiable – for example, because the tool does not require users to provide any personal identification details.

Providers can only offer personalised digital advice services if they are on the list of providers approved for the exemption. The current list is set out in Schedule 1 of the exemption.

Providers are permitted to provide class services under the FA Act without needing the exemption. Class services cover generic recommendations based on characteristics such as age and risk profile¹.

Eligibility criteria

To be included in the exemption, a provider must:

- complete the application process and be approved for the exemption. Please see 'Application process' below for more information
- be registered on the Financial Service Providers Register ('FSP Register')
- be a member of an approved dispute resolution scheme.

For more information about how to register on the FSP Register and join an approved dispute resolution scheme, please see www.fspr.govt.nz.

Application process

The exemption is only available to those providers we approve. The current list of approved providers is set out in Schedule 1 of the exemption.

Providers need to apply to us to be included on the list. As part of the application process, providers need to provide us with good character declarations and show they meet minimum standards demonstrating their capability and competency to provide personalised services through a digital advice service.

For more information about how to apply for the exemption, and the minimum standards you'll need to show you meet, please see our [application guide](#).

Is the exemption limited or restricted?

The exemption is limited to personalised financial advice and personalised investment planning services ('IPS') provided through a digital advice service². It does not apply to a discretionary investment management service³.

¹ For more information on personalised and class services see s15 (When financial adviser service is personalised service or class service) of the [FA Act](#).

² For more information see s10 (When person gives financial advice) and s11 (When person provides investment planning service) of the [FA Act](#).

³ For more information see s12 (When person provides discretionary investment management service) of the [FA Act](#).

The exemption is also limited to services that relate to certain eligible products. These include⁴:

- interests in KiwiSaver schemes and other managed funds
- listed equity securities, listed debt securities, or listed managed investment products
- Government bonds
- general and personal insurance products
- mortgages and other credit contracts
- savings products.

A provider can apply to us for an individual exemption if they want to provide personalised financial advice or IPS on other products through a personalised digital advice service. Any decision we make about granting individual exemptions will be based on whether the statutory test for granting an exemption is met and it promotes the purposes of the FA Act.

Understanding the exemption conditions

The exemption has several terms and conditions providers must comply with at all times while providing personalised financial advice or personalised IPS through a digital advice service under the exemption.

Disclosure

What the exemption says

The provider must disclose the information set out in Schedule 2 of the exemption to each retail client that uses the digital advice service, before or at the same time as the client receives any financial advice or IPS through the digital advice service.

Providers are also required to have procedures in place to comply with Code Standards 6, 7 and 10. Please see 'Conduct' below for more information.

Our comments

Disclosure is particularly important, as digital advice services are often provided with no, or limited, human interaction. Providers should recognise that digital advice services will be new to most consumers. This means there could be gaps in their understanding of what a digital advice service is and how it works.

The disclosure items in Schedule 2 are based on the existing requirements set out in the Code and the Financial Advisers (Disclosure) Regulations 2010.

The exemption requires providers to outline the nature and scope of the service, including a brief description of how it works, any limitations in its scope, and the implications those limitations may have for the service provided. To comply with this requirement, providers may wish to consider:

- *Explaining the scope of the advice being offered*
For example, explaining that the digital advice service only offers advice on a provider's KiwiSaver scheme

⁴ The full list of eligible products is set out in cl4 of the exemption – see definition of 'specified product'. Terms defined in the FA Act and used, but not defined, in the exemption have the same meaning as in the FA Act.

funds and does not cover other providers' KiwiSaver schemes – which means there may be other schemes that are suitable for the client that are not covered by the advice. The provider could also explain that the service does not take into account other financial needs or goals the client may have, such as repaying debt – which means this type of service would not be suitable for someone seeking a financial plan that does take into account their wider circumstances.

- *Clarifying the information used as the basis for the service*
For example, explaining that the advice is based solely on the information the client provides as part of the digital advice service and does not ask for or take into account information about the client's broader circumstances, such as debt obligations or tax situation.
- *Clarifying the extent of human involvement*
For example, explaining to their clients:
 - what to do if they have questions
 - whether they can speak to a human adviser if needed.
- *Explaining how tailored the advice recommendations are*
For example, if the algorithm only generates a limited set of pre-determined investment portfolios that may or may not be able to be customised, that should be explained to the client.

How to disclose

To comply with Code Standard 6, providers need to ensure they communicate all information clearly, concisely and effectively.

A formal disclosure statement is not required, and the form or method of disclosure is not prescribed. This means providers can stagger disclosures throughout their digital advice service – for example, by spreading them across different webpages. It also recognises the best way to present the information effectively will vary from one medium to another.

Disclosures need to be structured to put the client's needs first. The information should be communicated to a client in a manner and at a time that best supports the use of that information by the client to make informed decisions. We encourage providers to think about how they can use technology to present plain-English disclosures in a user-friendly and engaging manner – for example, using pop-ups at appropriate points in the process, or short videos or graphics to explain how the service works.

The exemption requires the disclosure information to be provided before, or at the same time as, the client receives any financial advice or IPS through the service. This means the client must have received all the required information either before the point that the digital advice service generates the financial advice or IPS, or with that advice or IPS. Providers should think carefully about the best time to provide the information. For example, information about potential conflicts may be most useful to inform a client's decision-making if it is provided at the same time as the recommendation to buy a specific product. Fee information might be useful once the client has undergone an initial needs analysis, so an accurate estimate can be generated.

The exemption does not require providers to obtain active confirmation from the client that they have read the disclosures and agree to receive the personalised digital advice service on that basis. However, providers can choose to build client confirmations into their system if they wish, and may find this useful in the event of a future dispute.

Existing FA Act disclosure obligations

The exemption notice exempts providers from section 22 of the FA Act. This means they do not have to give clients a short disclosure statement, which would be redundant in view of the fuller disclosure required under the exemption.

The exemption notice does not exempt providers from section 25 of the FA Act. This requires qualifying financial entities (QFEs) to make certain disclosures before providing a personalised service to a retail client. An exemption from section 25 is not needed because section 25 only applies when a QFE acts through a QFE adviser.

Conduct

What the exemption says

The provider must have procedures in place that give reasonable assurance they will comply with the following Code Standards when providing the digital advice service:

- Code Standard 1 – placing the interests of the client first, and acting with integrity
- Code Standard 2 – not doing anything to bring the financial advisory industry into disrepute
- Code Standard 3 – not stating or implying the adviser or the service is independent if that is not the case
- Code Standard 5 – effectively managing conflicts of interest
- Code Standard 6 – behaving professionally, and communicating clearly, concisely and effectively
- Code Standard 7 – ensuring retail clients can make informed decisions
- Code Standard 9 – ensuring the service is suitable for the client
- Code Standard 10 – ensuring retail clients can make informed decisions about personalised services
- Code Standard 11 – ensuring there is an appropriate internal process for resolving client complaints.

The provider must also have in place ways to identify and remedy any deficiencies in its procedures.

Our comments

Our view is that how personalised digital advice services are delivered needs to be consistent with the Code Standards. The type of channel used to deliver advice – digital or human-to-human interaction – should not affect the standards that apply to that advice. The exemption states that the Code Standards apply to the provider when providing financial advice or IPS through a digital advice service with all necessary modifications as if the service were given by an authorised financial adviser ('AFA'). This means providers do not need to comply with aspects of the Code that are not applicable to an entity – for example, parts of the Code that refer to an AFA's employer or principal, or to the receipt of salary or wages, do not apply.

Not all the Code Standards are listed in the conduct condition. Code Standard 4 is not appropriate to impose on a provider. It restricts an AFA from borrowing from or lending to a client. Providers may borrow from or lend to clients in the ordinary course of business. The other Code Standards already captured by equivalent requirements for providers relying on the exemption are as follows:

- Code Standard 8 – reflected in the disclosure condition
- Code Standards 12-13 – reflected in the record-keeping condition (see below)
- Code Standards 14 -18 – the competence of the entity to provide the digital advice service is assessed in the application process.

Record-keeping

What the exemption says

The provider must retain written records about the personalised digital advice services provided to each retail client for at least seven years, and make these available to clients and to us on request. This includes:

- copies of the financial advice or IPS provided to the client through the digital advice service
- copies of the client information used by the digital advice service to generate that advice or IPS
- copies of all algorithms and software used by the digital advice service.

The provider is not required to give the client copies of the algorithms and software used by the digital advice service.

Our comments

To comply with this condition, the provider would need to keep a copy of the client's information used to generate the financial advice (eg income, age, assets, financial goals, investment horizon, risk tolerance), and a copy of the financial advice or investment plan itself.

The provider would also need to keep copies of the algorithms and software used to generate the advice. One way to do this is by storing different versions of the algorithms and software.

The records can be kept in digital (electronic) form, provided the information is readily accessible⁵.

The exemption applies to personalised digital advice services where the user is named or otherwise readily identifiable. Providers do not need to keep records of digital advice provided to anonymous users of a digital advice service where no personal identification details are provided.

Some digital tools enable clients to adjust their responses to see how this changes the advice. This does not change the provider's obligation to keep records of advice provided and the information this was based on. An advantage of digital advice services is the relative ease of recording information and keeping client records compared to traditional human advice processes.

Notifying FMA of a material change of circumstances

What the exemption says

The provider must notify us in writing as soon as practicable after forming the belief that a material change of circumstances has or may have occurred, or is likely to occur. 'Material change of circumstances' means:

- a change that materially and adversely affects the provider's ability to provide the personalised digital service effectively. This would include a material adverse change in relation to the minimum standards⁶.
- The provider or its directors or senior managers becoming subject to any new:
 - proceedings or actions related to breaches of financial markets legislation
 - proceedings for conduct relating to dishonesty, fraud, or misleading or deceptive conduct
 - bankruptcy or insolvency proceedings.

⁵ See s223 of the [Contract and Commercial Law Act 2017](#).

⁶ More information about the minimum standards we require providers to meet to be approved to rely on the exemption is available in our [application guide](#).

If the provider fails to notify us, the exemption ceases to apply until the notification is sent.

Our comments

Notification should be provided by email to compliance@fma.govt.nz. The subject line of the email should be: 'FA Personalised Digital Advice Exemption Notice – Material change notification – *[name of provider]*'. The notification needs to contain details of the material change of circumstances and explain why the provider thinks this has or may have occurred, or is likely to occur. There is no prescribed form for the notification.

A provider who complies with the notification requirement can continue to provide services under the exemption even if a material change of circumstances has occurred. The process for notifying us is straightforward, so we encourage providers to notify us if in doubt. Once we receive a notification, we will consider whether this changes our view of the good character of the provider's directors or senior managers, or of the capability and competency of the provider to provide a personalised digital advice service. If we have concerns we will engage with the provider to see whether the issue can be remedied or rectified.

If the provider is unable to address our concerns, we can consider what further action may be appropriate. This could include amending the exemption to remove the provider from the approved provider list.

Other requirements

As well as complying with the exemption conditions, providers of personalised financial advice or IPS through digital advice services need to comply with the conduct obligations in Part 2 of the FA Act. The providers must, for example, exercise the care, diligence and skill a reasonable financial adviser would exercise in the same circumstances.

Providers may also need to comply with other legislative obligations under the FA Act and other laws. They should take these obligations into account in the design and operation of their personalised digital advice service. For example:

- obligations in relation to client money and property under Part 3 of the FA Act (Brokers' disclosure and conduct obligations)
- anti-money laundering obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009
- obligations in relation to the use, disclosure and protection of clients' personal information under the Privacy Act 1993.

We recommend providers seek legal advice if they are uncertain about the legal requirements that apply to their business.

Monitoring and enforcement

We will supervise providers and monitor compliance with the exemption in accordance with our normal supervisory and monitoring practices.

To assist with this, we may periodically request that providers give us updated information about their personalised digital advice service and their use of the exemption.

Providers will need to have robust systems and processes in place to ensure they comply with the terms and conditions of the exemption at all times. A provider who breaches the exemption conditions would be in breach of the

FA Act provisions to which the exemption applies. If a provider fails to comply, we would consider our response in accordance with our general [enforcement policy](#).

New financial advice regime

The exemption will be revoked when the new financial advice regime under the Financial Markets Conduct Act 2013 ('FMC Act') comes into effect in June 2020, replacing the existing FA Act regime. The new regime is 'technology neutral', which enables providers to give digital advice.

When the new regime comes into effect in June 2020, financial advice providers that hold transitional licences can use a digital advice delivery channel if they wish, provided they comply with the new conduct obligations in the FMC Act (as introduced by the [FSLAA](#)), including the competence standards in the [new Code](#).

The new regime will have a two-year transitional period. During this period, some licensed providers can take advantage of a competency 'safe harbour'. This allows them to continue to provide regulated financial advice that they would have been permitted to provide under the FA Act, without needing to comply with the competence standards in the [new Code](#). For personalised digital advice, this is only available to providers who are named in the [schedule](#) to the exemption.

We will accept transitional licence applications between Monday 4 November and June 2020 (when the new regime comes into effect). Please see our [webpage](#) about the new regime and [transitional licence guide](#) for more information. Anyone can apply for a transitional licence and then provide digital advice from June 2020. This is not restricted to providers who are named in the [schedule](#) to the exemption.

What to do before you apply

Interested providers and their advisers should:

- read the exemption and become familiar with its requirements
- read our [application guide](#) for more information about the application process and the minimum standards
- consider seeking legal advice on how the FA Act and exemption would apply to you and your proposed digital advice service
- get in touch with us early if you want to rely on the exemption.

Contact us

Monday to Friday 8.30am to 5.00pm

Calling from New Zealand: 0800 434 567

Calling outside New Zealand: +64 3 962 2698

Email: exemptions@fma.govt.nz