

Part 11—Offences, Penalties and Proceedings

Offences and penalties

49.—(1) If any person—

(a) for any purpose connected with this Act—

(i) knowingly makes any false statement; or

(ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;¹

(b) fails to pay to the Fund in any month any amount which, under the provisions of subsection (i) of section 13, he is liable to pay in that month;²

(c) obstructs any officer or servant of the Board in the discharge of his functions as such;³

(d) *Repealed by Act No. 34 of 1998 s. 16---the paragraph to be deleted;*

(e) *Repealed by Act No. 34 of 1998 s. 16---the paragraph to be deleted;*

(f) fails to pay to the Board, within such period as may be prescribed, any surcharge which he is liable to pay under the provisions of section 14 or subsection (10) of section 38; *(Amended by Act No. 15 of 1995 s. 18)*⁴

(g) being or ever having been a member, officer, servant or agent of the Board directly or indirectly communicates or reveals to any person any matter relating to the business of the Board which shall have become known to him in his capacity as member, officer, servant or agent, except as may be required for the due discharge of his duties as such member, officer, servant or agent or as may be permitted by the Board;⁵

¹ A serious offence is committed if any person provides FNPf with a statement, information or document that is false. The person will be held guilty and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

² According to Section 13(i) every employer has to pay to the FNPf for each of his employees, a monthly FNPf contribution calculated upon the amount of wages that is paid to the employee. An employer who fails to pay these contributions is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

³ If a person does not allow or obstructs an FNPf officer to carry out his duties is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

⁴ If the employer fails to pay any FNPf contributions in the month during which they are due to be paid, the employer has to pay a surcharge to FNPf on the total amount of all contributions at the rate of 2% in respect of each month or part of the month. Under Section 38(10) if a member is assisted under the Housing Finance Assistance Scheme and opts to repay the money to FNPf by installment and if an approved lender fails to transfer payments then the approved lender has to pay a surcharge on the total amount of all payments not transferred to the Board at the rate of two per cent in respect of each month or part of a month.

An approved lender is (a) the Housing Authority; (b) the Home Finance Company Limited; (c) a bank in possession of a valid licence under the Banking Act 1983; or (d) a lender approved and gazetted by the Minister.

⁵ Any person who has worked for FNPf, a member, officer, servant or agent of the Board cannot release any information regarding FNPf business issues to anyone. If any such person reveals or communicates any information without the authority of the FNPf Board is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

(h) procures any member, officer, servant or agent of the Board or any person who had ever been such member, officer, servant or agent to communicate or reveal any such matter as is set out in paragraph (g);⁶

(i) Repealed by Act No. 34 of 1998 s. 16---the paragraph to be deleted ;

(j) fails to pay any contribution or surcharge which he is required to pay under the provisions of section 47;⁷

(k) fails to produce at the time specified, any document required to be produced by notice in writing under the provisions of paragraph (c) of section 61,⁸

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment. (*Amended by Ordinance 13 of 1967, s. 3; 63 of 1968, s. 5; Act 1 of 1970, s. 9; 21 of 1974, s. 4.*)

(2) If any person—

(a) makes, in respect of any contributions, any deductions in any manner other than by deduction from the wages in respect of which such contributions are calculated or at time other than the time at which such wages are payable;⁹

(b) deducts from the wages of any employee any sum greater than that permitted to be recovered under the provisions of this Act;¹⁰ or

(c) having made any deductions, fails to pay to the Fund in the months in which they are due the contributions in respect of which such deductions have been made,¹¹

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment. (*Substituted by Act 1 of 1976, s. 6.*)

⁶ Any person who has worked for FNPF, is or was a member, officer, servant or agent of the Board tries to obtain any information about FNPF regarding the business issues of FNPF is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

⁷ Section 47 requires any trustee in bankruptcy, assignee, liquidator, receiver, personal representative or other such person is dealing with the property, business or estate of any employer who has failed to pay any contributions payable by the employer under the provisions of the FNPF Act, such person shall pay such contributions in such manner as may be determined by the Board before making any distribution of such property, business or estate. Any person who defies this provision is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

⁸Section 61 gives FNPF's inspectors the powers to demand from the employers any document which an employer is required to keep under the provisions of the FNPF Act or of the Employment Act, or any document relating to a contract or the conditions of service existing between an employer and his employee or employees. Any employer who fails to comply with Section 61 is guilty of an offence and will be fined \$500 and less or imprisoned for a term less than 12 months or will face both the fine and imprisonment.

⁹ If any person makes any other form of FNPF deductions except by deduction from the wages for which contributions are calculated then he is guilty of an offence and will be fined \$1,000 and less or imprisoned for a term less than 2 years or will face both the fine and imprisonment.

¹⁰ Section 13 of the Act requires the employer to pay 16 cents on every dollar, 8 cents is contributed by the employee and 8 cents by the employer. If an employer deducts more than 8 cents from the employee's wages, then he is guilty of an offence and will be fined \$1,000 and less or imprisoned for a term less than 2 years or will face both the fine and imprisonment.

¹¹If an employer deducts the FNPF contributions from the employee's wages and fails to pay it to FNPF, then he is guilty of an offence and will be fined \$1,000 and less or imprisoned for a term less than 2 years or will face both the fine and imprisonment.

(3) Notwithstanding the provisions of any other Act, proceedings may be taken for any offence under this Act within 3 years of the date of commission of such offence.¹²

¹² The Act allows FNPF to commence court actions within 3 years from the time the offence is committed.

Notice of unpaid contributions

50. If notice of intention so to do is served by the prosecuting officer upon the defendant, evidence may be given, at any trial for an offence under the provisions of paragraph (b) of subsection (1) or of subsection (2) of section 49, of other contributions unpaid at the date of the service of the summons upon the defendant, in respect of other employees, in the form of a certificate under the hand of the **General Manager or of any officer, servant or agent of the Board authorized in writing for the purpose by the General Manager** and, if the defendant is convicted of such offence, the court by which he is so convicted **shall**, without prejudice to any right under the provisions of section 56, order the defendant to pay to the Fund the amount of such unpaid contributions, together with any contribution unpaid at the date of trial in respect of the charge upon which the defendant has been convicted, and the provisions of the Penal Code relating to fines shall apply to any such contributions or any portion thereof so ordered to be paid.¹³ (*Amended by Ordinance 63 of 1968, s. 6; 41 of 1969, s. 7; Act 9 of 1973, s. 5; 21 of 1974, s. 5, 29 of 1986 s. 16., 15 of 1995 s. 19, 34 of 1998 s. 17*)

Further powers of Court

51. Where any person is convicted under the provisions of paragraph (f) or (j) of subsection (1) of section 49 of failure to make any transfer or to pay any surcharge, the court by which he is so convicted **shall**, without prejudice to the provisions of section 56, order the defendant to pay to the Fund the amount required to be transferred or to be paid as a surcharge in the same way as is provided in relation to the payment of contributions under the provisions of section 50.¹⁴ (*Inserted by Ordinance 41 of 1969, s. 8, amended by Act No. 15 of 1995 s. 20, 34 of 1998 s. 18*)

Liability of officers of corporations

52. Where an offence under this Act has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.¹⁵

¹³ If an employer has been charged for failing to pay FNPF contributions to its employees, then the General Manager of FNPF can issue a certificate together with the prosecution court documents of other employees unpaid contributions at the date of the service of the summons upon the employer. And if the employer is convicted of the offence, the court shall order the employer to pay to FNPF the amount of such unpaid contributions, together with any contribution unpaid at the date of trial in respect of the charge for which the employer has been convicted.

¹⁴ If a person is convicted for failure to make any transfer or to pay any surcharge, the court can order the person to pay to the Fund the amount required to be transferred or to be paid as a surcharge in the same way as is provided in relation to the payment of contributions.

¹⁵ If a body corporate, firm, society or other body of persons, any person who is either acting or is a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society commits an offence will be held guilty, unless he proves that the offence was committed without his consent and he had no part in the offence being committed.

Repayment to employee of illegal deductions

53. Where it is shown to the satisfaction of any court, on conviction for any offence under this Act, that any employer has made any deductions or recovered any money from any employee in respect of any contributions otherwise than in accordance with the provisions of this Act, the court may order such employer to repay to any employee in respect of whom such illegal deductions or recoveries have been made the amount of such illegal deductions or recoveries.¹⁶ (*Inserted by Act 1 of 1976, s. 7*)

Prosecutions

54. Prosecutions in respect of any offences under this Act may be instituted by the Manager, or by any officer, servant or agent of the Board authorised in writing in that behalf by the **General Manager or of any officer, servant or agent of the Board authorized in writing for the purpose by the General Manager**, and the Manager or any such authorised officer, servant or agent may conduct any such prosecutions, whether or not he was the person who made the complaint to institute or otherwise instituted the proceedings.¹⁷ (*Substituted by Act 21 of 1974, s. 6., 29 of 1986 s. 16, amended by Act No. 34 of 1998 s. 19*)

Evidence in proceedings

55. In any criminal or civil legal proceedings under the provisions of this Act, a copy of an entry in the records or accounts of the Fund duly certified under the hand of the Manager shall be *prima facie* evidence of such entry having been made and of the truth of the contents thereof, and a certificate under the hand of the Manager that there is no entry shall be *prima facie* evidence that no entry has been made.¹⁸

Civil proceedings

56.—(1) All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a debt due.¹⁹

(2) Proceedings for the recovery as civil debts of any contribution may, notwithstanding anything in any other Act to the contrary, be brought at any time within 6 years from the date when the contribution becomes due.²⁰

(3) Proceedings for the recovery as civil debts of contributions may be instituted by the Manager, or by any officer, servant or agent of the Board authorised in writing in that behalf by the **General Manager**, and the **General Manager** or any such authorised officer, servant or agent may conduct any such proceedings whether or not he was the person who instituted the proceedings.²¹ (*Substituted by Act 21 of 1974, s. 7, amended by Act No. 29 of 1986 s. 16.*)

¹⁶An employer cannot make any other forms of FNPF deductions from an employee. Any FNPF deductions made must be according to the rules of the FNPF Act. If the Court finds that any employer has made any unauthorized FNPF deductions or recovered any money from any employee the court may order the employer to repay to any employee all the illegal deductions.

¹⁷ Section 54 gives the officers of the FNPF the powers to commence prosecution cases in Court.

¹⁸ The Courts will accept the records or accounts that FNPF has during criminal trials. *Prima facie* evidence means that on the face of things, the evidence that FNPF has is assumed to be true and accurate.

¹⁹ FNPF can recover from any employer any FNPF contributions that are due and owing to the employees.

²⁰ Apart from Criminal cases, FNPF can institute civil actions to recover any contributions within 6 years from the time contributions are due.

²¹ Section 56 gives the officers of the FNPF the powers to commence cases in Court to recover contributions as a civil claim.

(4) In this section, the word "contribution" shall be deemed to include any surcharge under the provisions of section 14.²²

Loss of benefit through default of employer

57. If, as a consequence of a failure by an employer to pay any contribution at the time when such contribution is due, any benefit under the provisions of this Act which would have been payable to any person if such failure had not occurred is not payable, such employer shall, if convicted in any court of failure to pay such contribution at the time it was due, be liable to pay to the Fund the amount of benefit which would have been payable had the contribution been paid at the due time.²³ (*Inserted by Act 1 of 1976, s. 8.*)

Proceedings

58. Any sum which an employer shall be liable to pay under the provisions of section 57 shall be recoverable by the Board as a debt due and proceedings for the recovery of such a debt may be instituted by any of the persons authorised to institute proceedings under the provisions of subsection (3) of section 56.²⁴ (*Inserted by Act 21 of 1976, s. 8.*)

Application of sums recovered by Board

59. Any sum recovered by the Board under the provisions of sections 57 or 58 shall be paid by the Board to the person or persons who would, but for the offence of which the employer has been convicted, have been entitled to receive it under any of the provisions of this Act and, for the purposes of section 43, such payment shall be deemed to be a withdrawal from the Fund.²⁵ (*Inserted by Act 21 of 1976, s. 8.*)

Certificate by Manager

60. In any proceedings instituted under the provisions of section 58, a certificate under the hand of the **General Manager or of any officer, servant or agent of the Board authorized in writing for the purpose by the General Manager** as to the amount of benefit which would have been payable had the offence in respect of which an employer has been convicted not been committed shall be *prima facie* evidence of the nature and amount of the debt due.²⁶ (*Inserted by Act 21 of 1976, s. 8, amended by Act No. 29 of 1986 s. 16, 34 of 1998 s. 20*)

²² Under Section 56, the word contribution includes the amount of surcharge. A surcharge is paid by the Employer if he fails to pay FPNF contributions.

²³ If an employee is entitled to any benefit with the contributions, and if the employer fails to pay such benefit with the contributions, if convicted in by the court, the employer will have to pay to the Fund the amount of benefit which would have been payable had the contribution been paid at the due time.

²⁴ FPNF officers are authorized by the General Manager to commence civil proceedings for any benefit that the employer owes because he did not pay contributions on time. The action can be taken to court within 6 years from the time the debt or benefit is owing to the employee.

²⁵ The Board will pay to the employees the amount that was owing to them under sections 57 or 58. Under section 43 the Board will pay to the members nominees any amount which was owing to them.

²⁶ The Courts will accept the records or accounts that FPNF has during civil trials. The evidence that FPNF has is assumed to be true and accurate.

Part 12—Powers Of Inspectors and Officers of the Fund

Powers of inspectors

61. An inspector appointed under the provisions of subsection (3) of section 5 may, at any reasonable time—

(a) enter any premises or place where persons are believed to be engaged as employees;²⁷

(b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;²⁸

(c) require the production of any document which an employer is required to keep under the provisions of this Act or of the Employment Act, or any document relating to a contract or the conditions of service existing between an employer and his employee or employees and, for this purpose, may, by notice in writing served on an employer, either in accordance with the provisions of subsection (6) of section 2 of the Interpretation Act or, in any case, by sending it by registered post to an employer's address, require such production at any place reasonably accessible to such employer on a date and at a time specified in such notice, provided that the date so specified shall not be less than 21 days from the date of service of such notice and the notice shall be deemed to have been served upon the employer when the notice would arrive at the nearest post office in the ordinary course of post;²⁹

(d) examine, either alone or in the presence of any other person, with respect to any matters under this Act on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require such person to be examined, and for the purposes of such examination, may summon any such person to attend at the time and place specified in such summons.³⁰ (*Amended by Act 1 of 1970, s. 10; 9 of 1973, s. 6; 21 of 1974, s. 8.*)

²⁷ Section 5 of the FPNF Act gives the FPNF Board the powers to appoint agents, Inspectors and officers to carry out its functions as may be necessary for the purpose of the Act. The Inspectors can enter any property and premises at any time where there may be employees.

²⁸ Inspections can be carried out by the inspectors to see if the FPNF Act is being complied with.

²⁹ The inspector can demand from any employer any contract or the conditions of service between an employer and his employees and can send a notice to the employer for the production of employment documents. The rules require that the inspector must give the employer 21 days notice for the production.

³⁰ The Inspector has the powers to examine, either alone or with any other person on which he may want information relating to any matters in the FPNF Act.

Powers of officers of the Fund

62. An inspector, or any person appointed under the provisions of section 5 and so authorised in writing by the **General Manager**, may make such examination and inquiry as may be necessary for ascertaining the truth of any statement made for the purpose of establishing the date of entitlement of any member of the Fund and may, for that purpose— (*Amended by Act No. 29 of 1986 s. 16*)

(a) examine, either alone or in the presence of any other person, with respect to any matters under this Act on which he may reasonably require information, every person whom he has reason to believe can give information respecting the subject matter of the inquiry, and require every such person to be examined and, for the purposes of such examination, may summon any such person to attend at the time and place specified in such summons;³¹

(b) require any person who makes any such statement to sign a declaration as to its truth.³²

³¹ The can make inquiries from any person and can summon the person to appear in court for any evidence and to provide any information required by him.

³² The Inspector also has powers to ask any person to sign a declaration stating that the information the person has provide is true.