

THE NATIONAL HOUSING TRUST ACT

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THE NATIONAL HOUSING TRUST ACT

Acts
 32 of 1979,
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 Sch.
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 28 of 2003
 S. 2
 34 of 2004,
 23 of 2005.

[1st January, 1979.]

PART I. *Preliminary*

1. This Act may be cited as the National Housing Trust Act. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“approved savings instruments” means mortgage bonds issued by the Jamaica Mortgage Bank or such other mortgage bonds or other savings instruments as may be approved by the Board for the purposes of this Act; 5/1984
S. 2.

“the Board” means the Board of Directors of the Trust;

“benefit” means benefits payable pursuant to this Act;

“calendar year” means the period of twelve months commencing on the first day of January each year;

“Chairman” means the Chairman of the Board or any person for the time being performing the functions of the Chairman;

“contributor” means any employed person, self-employed person, voluntary contributor or domestic worker and every employer who is required to make contributions;

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“contribution” means a contribution payable pursuant to this Act;

“contribution week” means a period of seven days commencing immediately after twelve o'clock midnight on each Sunday and ending at twelve o'clock midnight on the Sunday next following;

“contribution year” means the period of 52 weeks commencing on the first day of January in each year;

“domestic worker” means a person employed, otherwise than for the purposes of a trade or business, for the comfort or convenience of a member of a household or in or about a dwelling-house or such other premises as may be prescribed in such capacities as housekeeper, cook, maid (including children's maid), laundress, butler, general help, gardener, chauffeur or other similar capacity;

“earnings” means, in relation to any person in any income tax year, the statutory income computed pursuant to the Income Tax Act as being the statutory income of that person for that year;

“emoluments” means any emoluments assessable to income tax pursuant to paragraph (c) of section 5 of the Income Tax Act (other than annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit and such other categories of

emoluments as may be prescribed) being emoluments from which income tax is deductible pursuant to the Income Tax (Employments) Regulations, whether or not tax in fact falls to be deducted therefrom;

“employed person” means, subject to section 11, a person over the age of eighteen and under retirement age gainfully occupied in employment specified in the Third Schedule and earning not less than the minimum wage as prescribed under the Minimum Wage Act; Third
Schedule.

“employer” means any person who has in his employment a person who is required to make contributions pursuant to this Act otherwise than as a voluntary contributor;

“functions” includes duties and powers;

“income tax” means income tax payable pursuant to the Income Tax Act;

“Inspector” means an officer designated as such pursuant to section 30;

“minimum wage” means the minimum rate of wages for any occupation fixed by the Minister under section 3 of the Minimum Wage Act;

“retirement age” has the meaning assigned to it by subsection (2) of section 19;

“self-employed person” means, subject to section 11, a person gainfully occupied in Jamaica who, in relation to that occupation, is not an employed person;

“the Trust” means the National Housing Trust established under section 3;

“voluntary contributor” has the meaning assigned to it by section 15;

“wages” includes salary or any other remuneration.

PART II. *Establishment of the Trust, management and functions*

Establishment of the National Housing Trust.

3.—(1) There shall be established for the purposes of this Act, a body to be known as the National Housing Trust (hereinafter referred to as “the Trust”) which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

First Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Trust and otherwise in relation thereto.

Functions of the Trust.

4.—(1) The functions of the Trust shall be—

(a) to add to and improve the existing supply of housing by—

(i) promoting housing projects to such extent as may from time to time be approved by the Minister;

5/1984
S.3 (a).

- (ii) making available to such contributors as may be prescribed, in such manner and on such terms and conditions as may be prescribed, loans to assist in the purchase, building, maintenance, repair or improvement of houses; and
 - (iii) encouraging and stimulating improved methods of production of houses;
- (b) to enhance the usefulness of the funds of the Trust by promoting greater efficiency in the housing sector.

* (1A) In addition to the functions specified in subsection (1), the Trust may provide financing up to a maximum amount in the aggregate of five billion dollars for projects for the development of education. 23/2005
S. 3.

(2) In the exercise of its functions, the Trust shall have power—

- (a) to provide finance for— 23/2005
S. 2.
 - (i) development projects undertaken by the Trust pursuant to sub-paragraph (i) of paragraph (a) of subsection (1);
 - (ii) social services and physical infrastructure for communities developed under the projects;
- (b) to administer and invest the moneys of the Trust;
- (c) to enter into loan agreements with borrowers;

* Provision becomes spent on 25.8.2006.

- (d) to receive and administer funds entrusted to the Trust in accordance with the provisions of this Act;
- (e) to make refunds and grants to contributors or any category thereof, on such terms and conditions as may be prescribed;
- (f) to re-finance from time to time, subject to such restrictions and conditions as may be prescribed, mortgages held by members of any prescribed category of contributors; and
- (g) to do such other things as may be advantageous, necessary or expedient for or in connection with the proper performance of its functions under this Act.

5/1984
S. 3(e).

(3) The Trust may, on such terms and conditions as it may approve, provide to such organizations and institutions as it thinks fit—

- (a) services in connection with any mortgage granted by those organizations or institutions to any person, whether a contributor or not; and
- (b) services in connection with any approved savings instruments.

Establishment
of the Board
of Directors.

5.—(1) There shall be established for the purposes of this Act, a Board of Directors of the Trust which shall, subject to the provisions of this Act, be responsible for the policy and general administration of the affairs of the Trust.

Second
Schedule.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

6. The Minister may, after consultation with the Chairman, give to the Board such directions of a general character as to the policy to be followed by the Board in the performance of its functions as appear to the Minister to be necessary, and the Board shall give effect thereto.

Power of Minister to issue general directions on matters of policy.

7.—(1) The resources of the Trust shall comprise—

Resources of the Trust.

- (a) moneys derived from contributions;
- (b) moneys derived from loans raised by the Trust from time to time in accordance with the provisions of this Act;
- (c) moneys earned by or arising from investments made on behalf of the Trust;
- (d) such moneys as may from time to time be placed at the disposition of the Trust by Parliament;
- (e) moneys recovered under this Act as costs or interest under section 32 or penalties under section 37;
- (f) all moneys properly accruing to the Trust under this Act, including, without prejudice to the generality of the foregoing, the repayment of loans;
- (g) such other moneys as may lawfully be paid to the Trust.

(2) The funds of the Trust, save in so far as they may be invested or utilized pursuant to this Act, shall be held by the Bank of Jamaica or any bank approved by the Board in which public funds may lawfully be deposited.

8. [*Deleted by Act 28/2003, S. 2.*]

9. Without prejudice to any other method of recovery, all debts due to the Trust may be recovered without limit of amount, in a Resident Magistrate's Court.

Recovery of debts.

10.—(1) Subject to the provisions of subsection (2), the Trust may borrow such sums as may be required by it for discharging any of its functions.

Borrowing powers.

(2) The power of the Trust to borrow shall, as to amount, as to the source of borrowing, and as to the terms on which the borrowing may be effected, be exercisable only with the approval of the Minister responsible for finance, and any such approval may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

(3) In this section “borrow” includes obtaining advances.

PART III. *Contributions*

Contributions. 11.—(1) For the purposes of this Act, contributors shall be divided into the following categories—

- (a) employed persons;
- (b) self-employed persons;
- (c) voluntary contributors;
- (d) employers.

(2) The Minister may by regulations modify the application of subsection (1) in relation to cases where it appears to him desirable to do so by reason of the nature or circumstances of a person's employment or otherwise, and, without prejudice to the generality of the foregoing, such regulations may provide—

- (a) for disregarding or for treating as not being employment either as a self-employed person or as an employed person—
 - (i) employment which in the opinion of the Minister is of a casual or subsidiary nature or in which the person concerned is engaged only to an inconsiderable extent;
 - (ii) employment in the service, or for the purposes of the trade or business, or as a partner, of a relative of the person concerned;

- (iii) such employment in the service of, or in the service of a person employed to, such international organizations or countries (other than Jamaica), as may be specified in the regulations;
- (b) for treating as employment as an employed person—
 - (i) such employment as a self-employed person as may be specified in the regulations;
 - (ii) such employment outside Jamaica in continuation of gainful employment in Jamaica as may be specified in the regulations;
- (c) for treating as employment as a self-employed person—
 - (i) such employment as an employed person as may be specified in the regulations;
 - (ii) such employment outside Jamaica in continuation of gainful employment in Jamaica as may be specified in the regulations;
- (d) for treating for the purposes of this Act, or of such provisions thereof as may be specified in the regulations, a person's employment either as an employed person or as a self-employed person as—
 - (i) continuing during periods of holiday, incapacity for work, or in such other circumstances as the Minister thinks appropriate;
 - (ii) ceasing in such circumstances as may be prescribed.

(3) Subject to the provisions of section 12, contributions shall be payable under this Act by contributors in accordance with the provisions of this section.

(4) Contributions shall be payable in such manner and on such terms and conditions as may be prescribed in regulations, so, however, that different rates of contribu-

tions, different methods of payment and different terms and conditions may be prescribed for different categories of contributors; and any regulations made pursuant to this subsection shall be subject to affirmative resolution of the House of Representatives.

(5) Until varied or revoked by regulations made under subsection (2) or (4) the regulations set out in Appendix A* and Appendix B* shall have effect.

(6) All regulations made under subsection (2) or (4) shall have the same force and effect as if they were contained in Appendix A or Appendix B, as the case may be.

(7) Subject to the provisions of this Act and the regulations, no person may pay contributions unless he is liable so to do.

(8) The Minister may provide by regulations, for the exemption of persons specified in those regulations, in whole or in part, from liability to pay contributions.

(9) Subject to section 13, contributions payable pursuant to this section by contributors shall not be treated as allowable deductions under the Income Tax Act.

(10) Subject to the provisions of this Act and except in so far as regulations otherwise provide, the provisions of the Income Tax Act, or any regulations thereunder concerning payment, collection and recovery of income tax, and the enforcing of payment shall apply to contributions in the same way as they apply to income tax; and no obligation as to secrecy imposed by statute or otherwise on persons employed in relation to income tax shall prevent information obtained in connection with the assessment or collection of income tax from being disclosed by or under the authority of the Commissioner in connection with the operation of this Act or the regulations relating to the calculation or collection of contributions under this Act.

*The c Regulations are reproduced in the Laws of Jamaica, Subsidiary Legislation.

(11) Nothing in this Act shall prevent the disclosure, for the purposes of this Act or the National Insurance Act, as the case may be, of information relating to contributions payable pursuant to this Act or pursuant to the National Insurance Act.

12.—(1) Subject to the provisions of subsection (2) or where regulations otherwise prescribe, an employer liable to pay contributions in respect of a person employed by him shall, in the first instance, be liable to pay also, on behalf of and to the exclusion of that person, any contribution payable by that person as an employed person for the same contribution week and, for the purposes of this Act, the contributions paid by an employer on behalf of an employed person shall be deemed to be contributions paid by the employed person.

Employer's liability to pay contributions due from employed persons.

(2) Where a contributor is employed to more than one employer and such contributor's total emoluments for the contribution week exceeds the minimum wage, the contributions payable by such contributor, shall be in such manner and at such times as may be prescribed.

(3) Notwithstanding any contract to the contrary, an employer shall not be entitled to deduct from the emoluments of a person employed by him, or otherwise to recover from such a person, the employer's contributions in respect of that person; and any employer who deducts or attempts to deduct the whole or any part of the employer's contributions in respect of any person from the emoluments of that person shall be guilty of an offence.

(4) An employer shall be entitled, subject to and in accordance with regulations, to recover from an employed person's pecuniary remuneration and not otherwise the amount of any contribution paid or to be paid by him on behalf of that person.

Treatment of employer's contributions for purposes of income tax.

13.—(1) For the purposes of section 13 of the Income Tax Act, employer's contributions under this Act shall be treated as expenses wholly or exclusively incurred in acquiring income.

(2) Nothing in subsection (1) shall be construed as authorizing the treatment as expenses for the purposes of section 13 aforesaid contributions paid or payable under the National Insurance Act.

(3) The provisions of subsection (1) shall not apply to any contributions made before the 1st day of August, 1979.

Employer failing to pay contributions.

14.—(1) Where an employer who is liable to pay contributions in accordance with section 12, fails to pay such contributions within the prescribed time, and the Trust is unaware of the amount, if any, which the employer is liable to pay, the Trust may give notice to such employer requiring him to render, within the time stated in the notice, a return showing the following particulars—

- (a) the name of every employed person to whom payment of wages was made by that employer during the period in question;
- (b) the amount of such wages paid; and
- (c) the contributions due to the Trust—
 - (i) on behalf of employed persons aforesaid; and
 - (ii) in respect of employer's contributions.

(2) The Trust shall ascertain and certify the amount of contributions which the employer is liable to pay to the Trust in respect of the period in question.

(3) The production of the certificate issued by the Trust under subsection (2), shall be sufficient evidence that the amount shown in the said certificate is the amount of contributions that the employer is liable to pay to the Trust,

in respect of the period in question until the contrary is proved.

15.—(1) Any person not liable to pay contributions under this Act may, on making application to the Minister within such time and in such manner as may be prescribed, be granted a certificate authorizing him to make voluntary contributions.

Voluntary contributions.

(2) Any person holding a certificate granted under this section (hereinafter referred to as a “voluntary contributor”) may pay such contributions as may be prescribed, within such time and in such manner as may be prescribed; and regulations may prescribe the circumstances in which such a certificate may be cancelled in default of payment of contributions within the prescribed time.

16. Notwithstanding anything contained in the Revenue Administration Act or the Tax Collection Act contributors shall pay contributions to such commercial banks or other agencies as may be specified by the Trust by notice published in the *Gazette*.

Payment of contributions to banks or agencies. 12/1985 Sch.

17.—(1) A sum determined on such basis and at such rate as the Minister may from time to time prescribe, shall be awarded and credited by the Board as a bonus on the contributions made by such contributors as may be prescribed, and shall be taken into account in the award of benefits pursuant to this Act.

Bonuses.

(2) Any bonus awarded pursuant to subsection (1) shall, in the hands of the recipient, be exempt from income tax.

18. The Trust shall cause to be issued to every contributor, in such form and at such times as may be prescribed, certificates showing the amount of contributions made and containing such other information as may be prescribed.

Certificate of contributions. 5/1984 S.4.

PART IV. *Benefits*

Form of
benefit.

19.—(1) The benefits in relation to contributions shall be of the following kinds only—

(a) housing benefits;

34/2004
S. 2.

(b) contributor's refund payable in accordance with section 21;

34/2004
S. 2.

(c) contributor's benefit payable in accordance with section 22.

26/1996
S. 2.

(2) For the purposes of benefits in respect of contributions retirement age shall be sixty-five years.

Housing
benefit.

20.—(1) Subject to the provisions of this Act, a contributor shall, subject to such contribution or other conditions as may from time to time be prescribed, be eligible for a housing benefit by way of a loan to assist him in the building, purchase, improvement, repair or maintenance of a house to be used as a residence, or for such other purposes or under such other circumstances connected with housing as may from time to time be prescribed.

(2) The Minister may from time to time, by order, prescribe the schemes which may be operated for the granting of benefits under this section, as well as the terms and conditions under which such benefits may be granted and any order made pursuant to this subsection shall be subject to negative resolution.

(3) Until varied or revoked by an order made under subsection (2), the order set out in Appendix C* shall have effect.

Contributor's
refund.
34 2004
S. 3.

21.—(1) Subject to the provisions of this Act, a contributor shall be entitled—

(a) within twelve months after the seventh anniversary of the end of the first contribution year to a refund

*This Order is reproduced in the Laws of Jamaica, Subsidiary Legislation.

equivalent to the contributions made by him during the first contribution year together with any bonus awarded thereon pursuant to section 17; and

- (b) thereafter within twelve months after the end of every contribution year to a refund equivalent to the contributions made by him during the year immediately after that on which the calculation in relation to his previous refund under this subsection was based, together with any bonus awarded on such contributions pursuant to section 17. 34/2004
S. 3.

(2) Subsection (1) shall not apply in relation to contributions made by any person as an employer.

(3) In this section “first contribution year” in relation to a contributor means the year in which that contributor first made contributions which render him eligible for a refund under this section.

34/2004
S. 3.

22—(1) Subject to the provisions of this Act and to such restrictions as may be prescribed, the Board shall grant contributor’s benefits equivalent to the contributions of any contributor together with any bonus awarded thereon less any benefit previously granted in respect of those contributions, in the following circumstances—

Contributor’s benefit in special circumstances.
34/2004
S. 4(a) & (b).

- (a) on the death of any such contributor, to his legal personal representative or to such person as described in subsection (2);
- (b) where a contributor satisfies the requirements for the receipt of an invalidity benefit under section 11 of the National Insurance Act, to such contributor;
- (c) on the attainment of retirement age or the age of sixty years by a contributor, to that contributor;
- (d) if the contributor becomes entitled to housing benefit pursuant to section 20, to that contributor;

26/1996
S. 3 (a).

(e) in such other circumstances and to such persons as may be prescribed.

34 2004
S. 4(c)(i), (ii)
& (iii).
26 1996
S. 3(b)(i)(ii).
34 2004
S. 4(b).

(2) Subject to subsection (3), if any contributor dies intestate, then the benefit payable under paragraph (a) of subsection (1) not exceeding fifty thousand dollars or an amount representing the funeral expenses, whichever is less, shall be payable to such person as shall appear to the Board to be entitled under the Intestates Estates and Property Charges Act, to receive the same, without taking out letters of administration, upon the Board receiving satisfactory evidence of death and a statutory declaration made before a Justice of the Peace or a Notary Public that the contributor died intestate, and that the person so claiming is entitled as aforesaid:

34 2004
S. 4(c)(iv).

Provided that whenever the Board after the death of any contributor has paid any such benefit to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as next of kin or as lawful representative of such deceased contributor against the funds of the Trust but nevertheless such next of kin or representative shall have his lawful remedy for the amount of such payment or benefit as aforesaid against the person who has received the same.

34 2004
S. 4(c)(iv).

(3) The Board may authorize disbursement of the amount referred to in subsection (2) only where—

34 2004
S. 4(d).

(a) the amount claimed—

- (i) does not exceed the contributions (together with any interest thereon) made by the deceased contributor; and
- (ii) does not include the amount of any refund previously made to the deceased contributor; and

- (b) a valid certificate of death and the relevant original invoices are submitted to the Trust together with the claim.

(4) Where there is no amount of contributions made by the deceased contributor remaining after his death, no benefit shall be payable to his estate or other claimant. 34/2004
S. 4(d).

22A—(1) Where the Trust is required to make refund pursuant to section 21 or benefits pursuant to section 22, payment may be made wholly or partly by means of approved savings instruments in accordance with the provisions of this section. Payment in approved savings instruments of refund or benefit.
5/1984
S. 5.
34/2004
S. 5(a), (b) & (c).

(1A) A contributor may, by notice in writing to the Trust, nominate a person to whom the refund shall be paid upon the death of that contributor. 34/2004
S. 5(a), (b) & (c).

(2) If the Trust thinks fit, it may by notice—

- (a) sent to any person entitled to receive a refund or benefit, as the case may be, (in this section referred to as the payee); or 34/2004
S. 5(d).
- (b) published either in a daily newspaper circulating in Jamaica or in such other manner as may be prescribed,

inform him that, within the period of ninety days of the date of receipt of a notice issued pursuant to paragraph (a), or of the date of the publication of a notice pursuant to paragraph (b), as the case may be, he may elect by memorandum in writing to the Trust to have payment made, subject to subsections (3) and (4)—

- (a) wholly in approved savings instruments of a nominal value equivalent to the amount of the refund or benefit, as the case may be; or 34/2004
S. 5(d)
- (b) wholly in cash; or

(c) partly in cash and partly in approved savings instruments of the appropriate nominal value having regard to the amount of the refund or benefit, as the case may be, and election for payment thereof partly in cash.

34/2004
S. 5(d).

(3) If the payee—

(a) makes an election pursuant to subsection (2) within the period specified in that subsection, the Trust shall, subject to subsection (4), make payment in accordance with the election;

(b) makes no such election within the period aforesaid, the Trust may, subject to subsection (4), make payment wholly by means of approved savings instruments of a nominal value equivalent to the refund or benefit, as the case may be, or wholly in cash or partly in cash and partly in approved savings in instruments of the appropriate nominal value having regard to the amount of the refund or benefit, as the case may be, and the portion thereof being paid in cash.

34/2004
S. 5(d).

34/2004
S. 5(d).

(4) Where a payee makes no election under this section or does not elect to have payment of a refund or benefit, as the case may be, made wholly in cash then, if—

34/2004
S. 5(d).

(a) the amount of the refund or benefit, as the case may be; or

34/2004
S. 5(d).

(b) the amount not payable in cash pursuant to an election for payment partly in cash,

is insufficient to purchase the lowest denomination of any approved savings instrument, the Trust may retain the refund or benefit, as the case may be, or the amount thereof not payable in cash, as the case may be, and shall purchase an approved savings instrument on behalf and in the name of the payee as soon as the amount retained together with the prescribed interest payable thereon and any other sums payable to the payee pursuant to this Act are sufficient for the purpose.

34/2004
S. 5(d).

(5) The Trust may, on the application of any person, hold approved savings instruments as security for loans made, pursuant to the provisions of this Act, to assist in the purchase, building, maintenance, repair or improvement of houses.

(6) The Minister responsible for finance may, by order, provide that interest payable on any issue of approved savings instruments shall, in the hands of the recipients, be exempt from income tax.

23.—(1) If it is found that any person, by reason of the non-disclosure or misrepresentation by him of a material fact (whether or not the non-disclosure or misrepresentation was fraudulent), has received any sum by way of benefit while he was not entitled to that benefit, he shall be liable to repay the sum so received by him.

Repayment of benefit improperly received.

(2) Where any person is liable to repay any sum received by him by way of benefit, that sum may be recovered, without prejudice to any other remedy, by means of deductions from any benefit to which he thereafter becomes entitled.

24.—(1) Notwithstanding anything to the contrary in this Act, any question as to the right to benefit shall be decided by the Board subject to an appeal to the Minister.

Determination of benefits.

(2) Any person claiming a benefit who is dissatisfied with the decision of the Minister pursuant to subsection (1) may within such time (if any) and in such manner (if any) as may be prescribed appeal to, and enforce his claim in, a Resident Magistrate's Court without limit of amount.

25. The rate of interest payable on any loan made to a contributor pursuant to section 20 shall be at such rate as may from time to time be decided by the Board, with the approval of the Minister; and different rates of interest may be charged for different categories of loans so as to ensure that persons in receipt of incomes below limits which may be set by the Board

Rate of interest.

with the approval of the Minister pay lower rates than persons in receipt of incomes at or above those limits.

Examination
as to appli-
cation of loan.

26.—(1) Where the Trust has made a loan under the provisions of subsection (1) of section 20 it may from time to time—

- (a) make or cause to be made, such examination as may be necessary to ensure that the loan is being applied to the purposes for which it was made;
- (b) require any contributor to whom a loan has been made to give either immediately or periodically, such information to the Trust as the Trust may require, and that contributor shall comply with the requirements of the Trust.

(2) The Trust may authorize any of its officers or servants or any other person, to make the examination contemplated in subsection (1), and the contributor to whom the loan was made shall produce to such officer, servant or person, as the case may be, all books, documents or other matters or things as he may require for the purposes of the examination.

Trust may
serve notice.

27. Where upon any examination made pursuant to the provisions of section 26 it appears to the Trust that any sum, being either the whole or any part of the loan made by the Trust, has not been applied to the purpose for which the loan was made, it may by notice in writing addressed to the contributor to whom the loan was made, require that such sum be, within the time specified in the notice, applied to such purpose, or that such sum, together with any interest due thereon on the date of the notice be repaid, and any sum with interest thereon so required to be repaid to the Trust shall thereupon become a debt due to the Trust.

28.—(1) The Trust may deduct from or set off against any payments to be made by the Trust to a contributor or to any representative of his, any amount due and payable under this Act by that contributor to the Trust.

Power of Trust to set-off.

(2) Where—

- (a) a contributor receives a housing loan from any body or organization to which the Trust advances money for housing purposes; and
- (b) such housing loan is made from the moneys advanced as aforesaid,

any amount payable (whether that amount has become due or not) by the contributor to that body or organization in relation to that housing loan shall be regarded as an amount payable to the Trust.

29.—(1) The Trust may where it deems necessary require an employer to deduct from the emoluments of an employee and forward to the Trust, the mortgage payments due to the Trust from such employee.

The power of the Trust to authorize the deduction of mortgage payments.

(2) Without prejudice to an employer's right to recover from the employee any amount require to be deducted pursuant to this section, that employer shall be liable to pay to the Trust any sum which he is required to deduct pursuant to this section.

(3) An employer who fails to pay to the Trust any sum required to be deducted under this section commits an offence and, on proof of such failure, is liable to pay to the Trust—

34/2004 S. 6.

- (a) in addition to that sum, a penalty at the rate of the applicable percentage per annum on the sum so liable to be paid; and
- (b) where the offence continues for longer than one year, in addition to the amount payable under paragraph (a), a surcharge of ten *per centum* per annum on the sum due and payable at the time of payment.

34/2004
S. 6.

(4) For the purposes of subsection (3), the applicable percentage is an amount equivalent to five percentage points above the weighted average *per centum* interest rate payable on Government treasury bills maturing three months from the date of issue, as determined from an auction of such bills, being the auction last held immediately preceding the earliest date of commission of the offence.

34/2004
S. 6.

(5) The Minister may, by order subject to affirmative resolution, amend the basis or amount of any penalty specified in this section.

PART V. *Administration*

Designation of
Inspectors.

30. The Board may designate such number of its employees as Inspectors as it thinks necessary for the proper carrying out of the provisions of this Act.

Power of
Inspectors.

31.—(1) An Inspector shall, for the purposes of this Act or the regulations, have power to do all or any of the following things, namely—

- (a) to enter at all reasonable times any premises or place (other than a private dwelling-house, not used by, or by permission of, the occupier for the purposes of a trade or business) where he has reasonable grounds for believing that any employed persons are employed;
- (b) to make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act or the regulations are being or have been complied with in such premises or place;
- (c) to exercise such other powers as may be necessary to implement the provisions of this Act and the regulations.

(2) The occupier of any such premises or place, and any other person who is or has been employing any employed person, and the servants and the agents of any such occupier or other person, and any employed person shall furnish to an Inspector all such information and produce for inspection all such books or documents as the Inspector may reasonably require.

(3) Any person who—

- (a) wilfully delays or obstructs an Inspector in the exercise of any power under this section; or
- (b) without lawful excuse, refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this section; or
- (c) conceals or attempts to conceal any person or prevents or attempts to prevent any person from appearing before or being questioned by an Inspector,

shall be guilty of an offence.

(4) Every Inspector shall be furnished with an identification card, and on applying for admission to any premises or place for the purposes of this Act or the regulations shall, if so required, produce the said card.

32.—(1) All sums due to the Trust by way of contributions, unless regulations otherwise provide or the Minister otherwise determines, shall bear interest at such rate and as from such date as may be prescribed and shall be recoverable as debts due to the Trust, and without prejudice to any other remedy, may be recovered on behalf of the Trust by a person designated by the Board summarily in a Resident Magistrate's Court, without limit of amount, as a civil debt.

Civil proceedings.

(2) A certificate of the Trust that any sum due to the Trust or interest thereon is payable under this Act and that payment has not been made to the Trust, or, to the best of the

Trust's knowledge and belief, to any person acting on behalf of the Trust, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Trust, and any document purporting to be such a certificate as is mentioned in this subsection, shall be deemed to be such a certificate unless the contrary is proved.

Proceedings
against
Inspector
under this Act.

33. In any action or other legal proceedings brought against any Inspector in respect of any act done in pursuance or execution or intended execution of this Act or the regulations, the plaintiff shall not recover unless he alleges in his pleading and proves at the trial that such act was done either maliciously or without reasonable and probable cause.

Power to
conduct
proceedings.

34. Any Inspector or other person may be authorized by the Trust to institute or conduct proceedings for an offence against this Act or the regulations.

Proceedings
against
employer for
benefit lost by
employer's
default.

35. Where an employer has failed or neglected—

- (a) to pay any contributions which under this Act or the regulations he is liable to pay in respect of or on behalf of any employed person in his employment; or
- (b) to comply, in relation to any such person, with the requirements either of this Act or of the regulations relating to the payment and collection of contributions,

and by reason thereof that person or any other person to whom benefit under this Act may have been payable has lost, in whole or in part, the benefit to which he would have been entitled, that person or that other person, as the case may be, shall be entitled to recover summarily from the employer in a Resident Magistrate's Court as a civil debt a sum equal to the amount of the benefit so lost.

36.—(1) Subject to subsection (2), this Act shall bind the Crown. Crown servants.

(2) This Act shall apply to the Crown and to persons employed by or under the Crown in like manner as if the Crown were a private person, subject to such modifications as may be made therein by order made by the Minister for the purpose of adapting the provisions of this Act to the case of the Crown and of such persons.

PART VI. *Miscellaneous*

37.—(1) If any employer has failed or neglected— Offences and penalties.
10/1986
S. 2(a)(i).

(a) to pay any contributions which under this Act or the regulations he is liable to pay; or

(b) to comply with the requirements either of this Act or the regulations relating to the payment and collection of such contributions and the furnishing of information in relation thereto,

such employer, as the case may be, shall be liable on summary conviction in a Resident Magistrate's Court to pay a fine not exceeding thirty thousand dollars or treble the amount of contribution which is unpaid, whichever is the greater, and in default of such payment to imprisonment with or without hard labour for a period not exceeding twelve months. 10/1986
S. 2 (a)(ii),
(iii).
26/1996
S. 4 (a).

(2) If any person—

(a) practises or is concerned in any fraudulent act, contrivance or device with intent to defraud the Trust of contributions; or

(b) for the purpose of obtaining any benefit or other payment under this Act or the regulations, whether for himself or for some other person, or for any other purpose connected with this Act—

- (i) knowingly or recklessly makes any false statement or false representations; or
- (ii) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

he shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding thirty thousand dollars or treble the amount of contribution in respect of which payment is sought to be evaded, whichever is the greater or to imprisonment with or without hard labour for a term not exceeding twelve months, or to both such fine and imprisonment.

10/1986
S. 2(b).
26/1996
S. 4(a).

(3) Any person who—

- (a) obtains a loan under section 20 by means of any false representations; or
- (b) wilfully applies any loan made to him under section 20 to any purpose other than the purpose for which the loan was made; or
- (c) fails to produce any books, documents or matter pursuant to subsection (2) of section 26,

shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding ten thousand dollars or in default of payment to imprisonment for a term not exceeding six months.

26/1996
S. 4(b).

(4) Where an employer or a contributor fails to pay the contributions he is liable to pay under this Act or any regulations thereunder, he shall be guilty of an offence and on proof of such failure, the employer or the contributor, as the case may be, shall be liable to pay the Trust—

26/1996
S. 4(c).

- (a) a sum equal to the total of all the contributions which he is so proved to have failed to pay with a penalty at the applicable percentage rate per annum on the sum total of the contributions so due; and 34/2004
S. 7(a).
- (b) where the offence continues for longer than one contribution year, in addition to the amount payable under paragraph (a), a surcharge of ten *per centum* per annum on the sum due and payable at the time of payment.

(4A) The “applicable percentage” is an amount equivalent to five percentage points above the weighted average interest rate payable on Government treasury bills maturing six months from the date of issue, as determined from an auction of such bills, being the auction last held immediately preceding the earliest date of commission of the offence. 34/2004
S. 7(b).

(4B) The Minister may by order, subject to affirmative resolution, amend, alter or increase— 34/2004
S. 7(b).

- (a) the basis;
- (b) the amount,

of any penalty specified in this section.

(5) If an employer being a body corporate fails to pay to the Trust any sum which the employer has been ordered to pay pursuant to this section, that sum, or such part as remains unpaid, shall be a debt due to the Trust jointly or severally from any director of the body corporate who knew, or could reasonably be expected to have known, of the failure to pay the contributions in question.

(6) Where an offence under this Act or any regulations thereunder which has been committed by a body corporate is proved to have been committed with the consent or connivance

of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Every person having any official duty of being employed in the administration of this Act shall regard and deal with as secret and confidential all documents, information, returns, assessment lists or copies of such lists obtained from the Commissioner of Income Tax and relating to the income or items of the income of any employer, employed person or self-employed person, as the case may be, and shall make and subscribe a declaration to that effect before a Justice of the Peace.

(8) Every such person as is referred to in subsection (7) having possession of or control over any such documents, information, returns or assessment lists, or copies of such lists relating to the income or items of the income of any employer, employed person or self-employed person, as the case may be, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies of such lists to any person—

(a) other than a person to whom he is authorized by the Minister responsible for finance to communicate it; or

(b) otherwise than for the purpose of this Act,

shall be guilty of an offence against this Act and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding thirty thousand dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding twelve months.

(9) If any person is guilty of any contravention of, or non-compliance with, any of the requirements of this Act or the regulations in respect of which no special penalty is provided, he shall for each offence be liable on summary conviction before a Resident Magistrate to a fine not exceeding thirty thousand dollars or to imprisonment with or without hard labour for a period not exceeding six months.

34/2004
S. 7 (c)(ii).

(10) The Minister may, by order, subject to affirmative resolution, amend any of the penalties specified in this section.

34/2004
S. 7 (d).

37A.—(1) Where an employer is a body corporate, such employer shall designate an officer of that body corporate (hereafter in this section referred to as the “responsible officer”) who shall be—

Designation
of respon-
sible officer
by body
corporate.
10/1986.
S. 3.

- (a) answerable for doing all such acts, matters and things as are required to be done by virtue of this Act or the regulations for the payment of contributions; and
- (b) responsible for making payment to the Trust of contributions payable by that body corporate in accordance with the provisions of this Act or the regulations relating to the payment of such contributions.

(2) The employer shall give written notice to the Collector of Taxes of any designation made pursuant to subsection (1) and shall also notify the Collector of Taxes of any change in that designation.

(3) In the absence of any designation pursuant to subsection (1), the person who is the managing director of the body corporate or, as the case may be, the person who (by whatever name called) performs the duties normally carried out by a managing director or, if there is no such person, the person in Jamaica appearing to the Collector of Taxes to be primarily in charge of the body corporate’s affairs, shall for the purposes of this section be deemed to be the responsible officer.

(4) A responsible officer shall, within fifteen days after the end of each month, notify the Collector of any outstanding balances of contributions payable to the Trust by the body corporate as at the end of that month and any responsible officer who fails to do so shall be guilty of an offence under this Act.

(5) A responsible officer who fails or neglects to carry out his duties in accordance with this section shall—

- (a) in the event of failure or neglect to make payment of contributions as required by this section, be jointly and severally liable together with the body corporate for the contributions and any penalty in relation thereto;
- (b) in any other case, be liable (together with the body corporate) for any penalties under this Act,

unless he satisfies the Collector—

- (i) that there were *bona fide* reasons for the failure or neglect and that the payment of contributions could not have been made in the circumstances; or
- (ii) that he was overruled by the board of directors (hereinafter referred to as the board) or was otherwise prevented by the board or by any director thereof from carrying out his duties under this section.

(6) If the Collector is not satisfied as to the matters referred to in subsection (5) (b) (i) or (ii), as the case may be, he shall advise the responsible officer concerned of his decision in writing.

(7) Where the responsible officer satisfies the Collector pursuant to subsection (5) (b) (ii) that he was overruled or prevented as mentioned in that subsection, each director shall

be jointly and severally liable (together with the body corporate) for contributions and any penalty in relation thereto unless he proves that—

- (a) there were *bona fide* reasons for overruling the responsible officer or preventing payment and that payment of contributions could not have been made in the circumstances; or
- (b) he was neither a party to the decision by the board to overrule the responsible officer nor a party to any action by the board or any other director to prevent payment.

(8) A person who is designated a responsible officer shall not be liable in respect of contributions which became payable—

- (a) prior to his designation; or
- (b) during any period when, consequent on notification to the Collector, he is not the responsible officer.

(9) In this section—

“body corporate” means—

- (a) a statutory body or authority; and
- (b) a company;

“company” means a company incorporated or registered under the Companies Act.

38.—(1) The Minister may make regulations required by this Act to be made or for the purpose of modifying or affecting the operation of any provision of this Act expressed (in whatever terms) to be subject to the provisions of any regulations or as the Minister may consider necessary or desirable generally for the better carrying out of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1) the Minister may by such regulations provide—

- (a) for the payment and collection of contributions under this Act;
- (b) for treating, for the purposes of any right to benefit, contributions paid after the due dates as paid on those dates or on such later dates as may be prescribed, or as not having been paid and for treating, for the purpose aforesaid, contributions payable by an employer on behalf of an employed person, but not paid, as paid where the failure to pay is shown not to have been with the consent or connivance of, or attributable to any negligence on the part of, the employed person;
- (c) for the return of contributions paid in error;
- (d) for treating contributions of the wrong category or at the wrong rate as paid on account of the contributions properly payable;
- (e) for calculating or estimating, in such manner and on such basis as may be prescribed, the amount of a person's earnings, emoluments, income or pecuniary remuneration for any period, and the rate of a person's emoluments or pecuniary remuneration;
- (f) for the issuing of receipts, forms and certificates as may be approved by the Trust;
- (g) for the supplying of relevant information by employers to employed persons as regards the contributions made;
- (h) for the forwarding of annual reports or returns by employers containing such information as the Trust may require;
- (i) for the keeping of such records by employers as the Trust may require for any purpose connected with the provisions of this Act.

(3) Without prejudice to the provisions of section 29 of the Interpretation Act, regulations under this Act may provide in respect of a breach of any of the provisions thereof that the offender shall be liable to such fine not exceeding thirty thousand dollars or to such terms of imprisonment with or without hard labour not exceeding six months or to both such fine and imprisonment as may be prescribed therein.

34/2004
S. 8.

(4) Except in so far as this Act otherwise provides, any power conferred thereby to make regulations may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make, as respects the cases in relation to which it is exercised—

- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
- (ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act;
- (iii) any such provision either unconditionally or subject to any specified condition.

(5) Without prejudice to any specific provision in this Act, any regulations under this Act may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

39. Regulations (including orders) made pursuant to this Act may be made to have effect from such date as may be specified therein not being a date earlier than the 1st day of January, 1976.

Retro-
activity of
regulations
under this
Act.

FIRST SCHEDULE

(Section 3)

The National Housing Trust

Authentication
of seal and
documents.

1.—(1) The seal of the Trust shall be authenticated by the signatures of the Chairman or a member of the Board authorized to act in that behalf and an officer of the Trust so authorized.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Trust may be signified under the hand of the Chairman or any member of the Board authorized to act in that behalf or an officer of the Trust so authorized.

Power to
appoint
officers and
servants.

2.—(1) The Trust may, subject to sub-paragraph (2), appoint and employ at such remuneration and on such terms and conditions as it thinks fit, a Manager of the Trust and such other officers, agents and servants as it thinks necessary for the proper carrying out of its functions:

26/1996
S. 6.

Provided that the appointment of—

- (a) Managing Director;
- (b) Senior Director of Finance, of Operations, of Corporate Services or of Technical Services; or
- (c) Company Secretary,

shall not be made without the prior approval of the Minister.

(2) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Jamaica to any office with the Trust and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

Expenses of
the Trust.

3.—(1) The expenses of the Trust (including the remuneration of the staff thereof and members of the Board) shall be defrayed out of the income of the Trust or from sums provided for the purpose by Parliament.

(2) In this paragraph “income” means interest or dividends earned or obtained on loans or investments made by the Trust.

Accounts,
audit and
estimates.

4.—(1) The Trust shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister.

(2) The accounts of the Trust shall be audited annually by the Auditor-General or by any auditor appointed annually by the Trust and approved by the Minister.

5/1984
S. 6 (b).

(3) The Trust shall, on or before the 28th day of February in each year, submit to the Minister for approval a financial plan, in respect of the financial year commencing the 1st day of April next following, which shall include—

- (a) an estimate of the operational expenses and income of the Trust;
- (b) estimates showing the estimated receipts by the Trust arising from contributions, loan repayments, payments in respect of mortgages, investments and similar sources.

(4) The Trust shall act in accordance with any plan approved pursuant to sub-paragraph (3) unless the Minister's prior permission to do otherwise has been obtained.

5. The Trust shall submit to the Minister for approval, by the 28th day of February in each year, an operating plan as to the allocation of loans for the purchase, building maintenance, repair or improvement of houses, the promotion of any housing development approved by the Minister pursuant to sub-paragraph (a) (i) of section 4 (1), the operational framework within which the Board shall carry out its functions, and such other matters as the Minister may require.

Operating plan.
5/1984
S. 6 (b).

6.—(1) The Trust shall, within six months after the end of each financial year, cause to be made and transmit to the Minister—

Annual report.

- (a) a statement of its accounts audited annually by the Auditor-General or by an auditor appointed annually by the Trust and approved by the Minister; and
- (b) a report dealing generally with the policy and proceedings of the Trust during the financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and auditor's report thereon to be laid on the respective Tables of both Houses of Parliament.

7. The Trust shall furnish the Minister with such return, accounts and other information as he may require with respect to the activities of the Trust, and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

Power of Minister to require returns.

8. At the end of each financial year, the Minister shall review the operations of the Trust with a view to determining—

Minister to review operations of Trust.

- (a) whether the Trust has operated in accordance with the operating plan approved by the Minister pursuant to paragraph 5;
- (b) whether the assets of the Trust are sufficient to meet the liabilities of the Trust having regard to claims expected to arise during the next ensuing year.

SECOND SCHEDULE

(Section 5)

The Board of Directors of the Trust

1. The Board shall consist of such number of persons, not being less than nine nor more than seventeen, as the Minister may from time to time appoint from persons appearing to the Minister to represent workers organizations, employers and the Government, respectively.

Constitution of Board of Directors.

- Temporary appointments. 2. The Minister may appoint any person to act temporarily in the place of any member of the Board in the absence or inability to act, of such member.
- Chairman. 3.—(1) The Minister shall appoint one of the members of the Board to be Chairman thereof.
- (2) In the case of the absence or inability to act of the Chairman, the Minister may appoint any other person to perform the functions of the Chairman.
- Tenure of office. 4.—(1) The appointment of every member of the Board shall be evidenced by instrument in writing, and such instrument shall state the period of office of the member, which shall not exceed three years.
- (2) Every member of the Board shall be eligible for reappointment.
- (3) Notwithstanding anything to the contrary, the Minister may at any time revoke the appointment of any member of the Board.
- Resignation. 5.—(1) Any member of the Board other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Board.
- (2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument.
- Publication of membership. 6. The names of all members of the Board as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Procedure, quorum and meetings. 7.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Board shall determine.
- (2) The Chairman may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by two members of the Board.
- (3) The Chairman shall preside at all meetings of the Board at which he is present and in the case of the Chairman's absence from any meeting, subject to sub-paragraph (2) of paragraph 3, the members present and forming a quorum shall elect one of their number to preside at the meeting.

(4) The decision of the Board shall be by a majority of votes, and, in addition to an original vote, the Chairman or any other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.

(5) Minutes in proper form of each meeting of the Board shall be kept.

(6) The Board shall determine its quorum for any particular meeting.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

(8) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

8. There shall be paid to the Chairman and other members of the Board, such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine. Remuneration of members.

9.—(1) No action, suit, prosecution or other proceedings shall be brought against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act. Protection of members.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Trust shall be liable to the extent that it would be if the member was a servant or agent of the Trust.

10. The office of Chairman or other member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica. Office of Chairman or member of Board not public office.

THIRD SCHEDULE (Sections 2 and 11)

Gainful Employment

1. Employment in Jamaica under any contract of service or apprenticeship, written or oral, and whether express or implied.

2. Employment as aforesaid outside Jamaica of a person domiciled or having a place of residence in Jamaica—

(a) as master or a member of the crew of any vessel, registered in Jamaica, or of any other vessel of which the owner, or, if there is more than one owner, the managing owner or manager, resides or has his principal place of business in Jamaica, or in any other capacity on board any such vessel;

NATIONAL HOUSING TRUST

- (b) as pilot, commander, navigator or member of the crew of any aircraft flying the Jamaican flag, or in any other capacity on board any such aircraft:

Provided that, in either case, the employment in that other capacity is for the purposes of the vessel or aircraft or the crew or of any passengers or cargo or mails carried thereby.

3. Service as a member of the Jamaica Defence Force.

4. Employment outside Jamaica of a citizen of Jamaica employed by a Jamaican Embassy, Jamaican High Commission, a Jamaican Consulate or a Jamaican company, resident abroad.