

Penalties and sanctions for non-payers

Article 36 contains provisions for offences and penalties. The ones relevant to an insured person not paying contributions are;

- (2) *An employer or insured person who fails to pay a contribution that he or she is liable to pay under this Law within the time prescribed for payment of the contribution shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.'*
- (4) *Provision made be made by Order for the recovery of monetary penalties in respect of any offence under this Law, being a contravention of or failure to comply with any provisions of the Order, so, however, that such penalties shall not exceed level 3 on the standard scale for each offence or, where the offence consists of continuing any such contravention or failure after conviction thereof, level 3 on the standard scale together with a further level 1 on the standard scale for each day on which it is so continued.'*

Article 38 provides for civil proceedings to be taken to recover sums due to Social Security Fund;

'Proceedings for the recovery of sums due to the Social Security Fund may be instituted by the Treasurer of the States, either in term or in vacation, and, notwithstanding any enactment or rule of Law to the contrary, any such proceedings may be brought at any time within 10 years from the time when the matter complained of arose.'

Article 39 enables the recovery of sums due to Social Security Fund by deductions from an insured persons class 1 earnings where a judgement has been obtained under Article 38.

- (1) *Where judgment has been obtained for the payment of any sum due to the Social Security Fund by any individual (in this Article referred to as the "judgment debtor") then, notwithstanding any enactment or rule of law to the contrary and without prejudice to any other means of recovery, the sum payable under the judgment together with the recoverable costs (in this Article referred to as the "judgment debt") may be recovered in accordance with the provisions of this Article.*
- (2) *Where it is desired to recover any judgment debt under this Article –*
 - (a) *the Minister may serve notice on the employer for the time being of the judgment debtor requiring the employer to furnish the Minister, within such time (not being less than 7 days) as may be specified in the notice with a certificate of the amount earned by the judgment debtor in the employ of the employer during such past period or periods as may be so specified; and*
 - (b) *whether or not such a certificate as aforesaid has been required to be furnished, the Minister may serve notice on the employer for the time being of the judgment debtor requiring the employer to make such deductions from the earnings of the judgment debtor as may, having regard to all the circumstances of the case, appear to the Minister to be reasonable and to pay the amounts so deducted to the Minister at such times as may be specified in the notice, and the amount so paid shall be applied towards the satisfaction of the judgment debt:*

Provided that where the judgement debt has been ordered to be paid by instalments, the Minister shall not require such deductions to be made as would at any date reduce the judgment debt by a greater amount than that by which it would have been reduced had the instalments been paid.
- (3) *Any employer who refuses or without lawful excuse fails to furnish a certificate which under paragraph (2)(a) the employer is required to furnish within such time as may be so required, or who furnishes a certificate which is false in a material particular, shall be liable to a fine not exceeding level 2 on the standard scale.^[136]*
- (4) *Any notice under paragraph (2)(b) may at any time be varied by a subsequent notice under that sub-paragraph.*

- (5) *A copy of every notice served under paragraphs (2)(b) or (4) shall be served also on the judgment debtor.*
- (6) *Where any employer fails to deduct any amount which the employer is required by virtue of paragraph (2)(b) to deduct, or to pay to the Minister any amount so deducted, the amount may be recovered from the employer as a debt due to the Social Security Fund.*
- (7) *Service of any notice under this Article may be effected by sending it by registered post to the person on whom it is to be served at his or her usual or last known place of abode or his or her principal place of business or, in the case of a company, at its registered office.'*

The Order made under Article 36 of the Law is **Social Security (Contributions) (Jersey) Order 1975** (the Order).

Article 20 of the Order contains provisions for the recovery of contributions. The ones relevant to an insured person owing contributions are;

- '(1) In any case where an employer or an insured person has been convicted of the offence under Article 36(1) of the Law of failing to pay a contribution the person shall be liable to pay to the Social Security Fund a sum equal to the amount which the person failed to pay.*
- (2) Where an employer or an insured person is charged with such offence as is mentioned in paragraph (1) of this Article and an order is made under Article 2(1) of the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée, the foregoing provisions of this Article shall apply as if the making of the order were a conviction.*
- (3) Any sum ordered to be paid to the Social Security Fund under this Article shall be recoverable as a penalty.'*
- '(6) Nothing in this Article shall be construed as preventing the Minister from recovering any sums due to the Social Security Fund by means of civil proceedings.'*