



education

**Department:
Education
PROVINCE OF KWAZULU-NATAL**

POLICY ON DEBT MANAGEMENT

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1. INTRODUCTION

The Head of Department as Accounting Officer, is responsible for, inter alia, effective, efficient, economical and transparent use of the resources of the department which includes the following:

- a) Recovering all money due to the department;
- b) Preventing unauthorised, irregular, fruitless or wasteful expenditure and losses resulting from criminal activity or conduct;
- c) Managing available working capital efficiently and economically;
- d) Ensuring that full and proper records of the financial affairs of the Department are maintained in line with Treasury requirements; and
- e) Maintaining proper accounts and records of all debtors, including amounts received.

These responsibilities have been entrusted to line function managers and have to be fulfilled with due regard to the applicable prescripts and fair administrative actions.

2. PURPOSE

The purpose of this document is to provide Departmental officials with a uniform policy for the management, control and recovery of all debt owed to the Department with due regard to legal requirements irrespective of how the debt arose.

3. SCOPE OF APPLICATION

This document is applicable to all employees and former employees of the Department as well as entities who are indebted to the KwaZulu-Natal Department of Education.

4. DEFINITIONS

The following terms have the meaning assigned to them:

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|------------------------|--|
| <i>"Bona fide"</i> | means in good faith; |
| <i>"Calendar Days"</i> | means consecutive days including weekends and Public Holidays; |
| <i>"Debt"</i> | means all monies owing to the Department; |
| <i>"Debtor"</i> | means a person or entity owing money to the Department; |
| <i>"Employee"</i> | means a person in the employ of a department; |
| <i>"Entities"</i> | means suppliers, schools, municipalities and other government Departments; |

<i>“Finance Component”</i>	means the Head of the Finance component in the District in respect of employees attached to the relevant District and the Director: Accounting Services for employees attached to Head Office;
<i>“HR Component”</i>	means the Head of the HR component in the District in respect of employees attached to the relevant District and the Director- HR Services in respect of employees attached to Head Office;
<i>“Impairment”</i>	means the estimated amount that the debt is to be reduced to, compared to the original debt value. This would be due to various conditions giving rise to this e.g. Prescription, etc.
<i>“In mora”</i>	means to inform a debtor of his/her debt;
<i>“In service”</i>	means the official is a current employee of the Department;
<i>“Mala fides”</i>	means in bad faith;
<i>“Out of service”</i>	means the official is no longer an employee of the Department.
<i>Prescription</i>	means a legal principle in terms of which a debtor’s liability to pay an outstanding debt is extinguished;
<i>“Remuneration”</i>	means any payment in money made to any official in return for that official’s services (gross income);
<i>“Working days”</i>	means days excluding weekends and public holidays.

5. ABBREVIATIONS

PERSAL	Personnel & Salaries management system used by the KwaZulu-Natal Department of Education;
BAS	Basic Accounting System used by the KwaZulu-Natal Department of Education;
HOD	Head of Department;
HR	Human Resources;
GEPF	Government Employees Pension Fund;
NTR	National Treasury Regulations;
PFMA	Public Finance Management Act;
KZNDoe	KwaZulu-Natal Department of Education;
GEP Law	Government Employees Pension Law;
PAJA	Promotion of Administrative Justice Act, 2000 (No. 3 of 2000).

6. AUTHORISATION

The mandate for this Policy is found in the following prescripts:

- a) The Constitution of the Republic of South African, 1996;
- b) The Public Finance Management Act, 1999 (Act No 1 of 1999);
- c) The Public Service Act, 1994 (Proclamation 103 of 1994) with due regard to DPSA letter dated 12 April 2018;
- d) Public Service Regulations, 2016;
- e) The Employment of Educators Act, 1998 (Act No. 76 of 1998);
- f) The Regulations Regarding the Terms and Conditions of Employment of Educators (G.N. 1743 of 1995, Published in Government Gazette No. 16814 dated 13 November 1995);
- g) Labour Relations Act, 1995 (Act No. 66 of 1995) as amended;
- h) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- i) Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- j) State Liability Act No, 1957(Act No. 20 of 1957);
- k) Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975);
- l) Income Tax Act, 1962 (Act No. 58 of 1962);
- m) Treasury Regulations, 15 March 2005, as amended;
- n) Magistrate Court Act, 1944 (Act No. 32 of 1944) as amended;
- o) Rules regulating the Conduct of the Proceedings of the Magistrates Courts of South Africa as published in Government Notice No 740 dated 23 August 2010 of Government Gazette No. 33487;
- p) Superior Court Act, 2013 (Act No. 10 of 2013);
- q) Supreme Court Rules No.59 of 1959;
- r) The Government Employees Pension Law, 1996 (Act No. 21 of 1996);
- s) The Basic Conditions of Employment Act, 1997 (Act 75 of 1997);
- t) The Prescription Act, 1969 (Act No. 68 of 1969);
- u) National Treasury Guide for managing departmental debt, 2014;
- v) KwaZulu-Natal Provincial Treasury- Debt Management Policy;
- w) KZNDoE Internal Financial Delegations issued in terms of Section 44(1) of the PFMA.

7. TYPES OF DEBT

Debt may accrue to the department as a result of, among others, the following:-

- a) Salary overpayment/s ;
- b) Late terminations;
- c) Remuneration, allowance, award or reward granted irregularly or fraudulently;
- d) Redeeming of State Guarantees;
- e) Breach of contracts;
- f) Under-collection of Tax ;
- g) Payment of Subsistence and Transport Advances;
- h) Fraudulent or irregular S & T payment
- i) Granting of leave without pay;
- j) Debt arising out of inter-departmental transfers;
- k) Erroneous, irregular and/or fraudulent payment to entities;
- l) Outstanding fines and claims for damages to state vehicles;

8. PREVENTATIVE MEASURES

8.1 With a view to preventing the occurrence of debt, responsible officials and their line function supervisors are required to ensure that:

- i) All payments (including but not limited to salary, rewards, awards, S&T advances, S&T, incentives) are correctly determined with due regard to existing directives and approval for the relevant payment is obtained in every instance in accordance with applicable instructions;
- ii) The salary in respect of exiting employees is frozen within a day of receipt of the notification of exit and in instances where it is apparent that an overpayment has already occurred it must be referred to the Director: Employee Relations (Head Office matters) and in the case of Districts to the District Director for immediate investigation;
- iii) State guarantees are redeemed in accordance with existing directives whilst the employee is still in service;
- iv) Non-compliance with the provisions of a contract are timeously detected and appropriate actions are instituted in accordance with the provisions of that contract;
- v) The leave measures with special reference to the timeframes as well as provisions relating to abscondment are strictly adhered to;
- vi) The prescribed Z59 Claim Form together with the last pay certificate in respect of inter-departmental transfer is completed and submitted timeously to the relevant department;
- vii) Payment to creditors/entities are effected only upon receipt of all relevant supporting documents which must include confirmation of service rendered or goods supplied;
- viii) Fines and damages to state vehicles are managed in accordance with the Policy applicable to the use of KZN vehicles.

9. GENERAL PROVISIONS

- 9.1 It is the responsibility of all officials and their line function supervisors to maintain high standards in the execution of their duties. Lapses in maintaining acceptable standards of performance and/or negligence in work performance especially in instances where a debt arises will not be allowed and will result in the institution of disciplinary action.
- 9.2 Consequently, the types of debts referred to in paragraph 7 above must be investigated with a view to instituting appropriate disciplinary action.
- 9.3 The investigation referred to in paragraph 9.2 above must be conducted by the Employee Relations Component or any other designated authority. For this purpose the Head of the Component responsible for the purported debt must forward, under cover of a letter, all correspondence relating to the purported debt to the Director: Employee Relations or any designated authority.

- 9.4 Upon completion of the investigation the matter must be dealt with in accordance with the findings and recommendations contained in the investigation report.
- 9.5 Notwithstanding the investigation referred to above, the Head of the Component responsible for the purported debt must simultaneously initiate processes for the recovery of the purported debt. In this regard the debt recovery processes as outlined hereunder must be adhered to.

10. ERRONEOUS PAYMENTS

- 10.1 Erroneous payments which are detected immediately after the payment has been processed must be rectified. The Component responsible for this erroneous payment must:
- (a) **Immediately institute processes for the payment to be recalled if the monies were already paid to the bank and**
 - (b) **Notify the recipient of the erroneous payment and advise that processes have been initiated to recall the payment.**
- 10.2 In respect of erroneous payments where the recall in terms of 10.1 above cannot be effected, the recipient of the erroneous payment must be requested to refund the full amount due immediately.

11. DEBT RECOVERY PROCESS

- 11.1 Once a purported debt has been identified, the component responsible for the function that led to the debt must immediately notify the debtor of the purported debt in writing and the letter in this regard must include information in respect of, inter-alia, the following:
- a) **circumstances and/or reasons that led to the purported debt;**
 - b) **the date from which the purported debt occurred; and**
 - c) **any other relevant information relating to the recovery of purported debt**
- 11.2 For the purpose of complying with the PAJA, the employee or the entity concerned must be afforded the opportunity to make representations (i.e. written motivation) to the Department regarding the notification referred to paragraph 11.1 above.
- 11.3 The employee/ entity must be advised in the letter referred to in Paragraph 11.1 above that the representations referred to in Paragraph 11.2 above must be submitted on or before a specified date and which date must be within 14 (fourteen) calendar days from the date of service of the letter.
- 11.4 The letter referred to in Paragraph 11.1 above must be served on the employee/ entity and there must be evidence of proof of service. If for any reason the employee/ entity refuses to accept the letter, the official attempting service must provide a statement to the component indicating the attempts made.
- 11.5 Immediately after the 14 days period for submission of representations, and in instances where no representations has been received, the Component responsible for the purported debt must notify the employee/ entity, in writing, to submit their representations within a further 10 calendar days from the date of service of the letter.

- 11.6 The letter referred to in Paragraph 11.5 above must be served on the employee/ entity and there must be evidence of proof of service. The processes in attempting service as outlined in paragraph 11.4 above must be adhered to.
- 11.7 In circumstances where the employee/ entity acknowledges the reason for the debt, the Component responsible for the debt must provide the Finance Component with all relevant documents with a view to initiating processes relating to the recovery of the debt in accordance with processes relating to the recovery of in-service and out of service debt.
- 11.8 In instances where the employee/ entity fails to respond, the Component responsible must:
- (a) Inform the employee/entity that due to their failure to respond, the processes relating to the recovery of debt will commence.
 - (b) Provide the Finance Component with all relevant documents with a view to initiating processes relating to the recovery of the debt in accordance with processes relating to the recovery of in-service and out of service debt.
- 11.9 In instances where the employee/ entity fails to respond, the Component responsible must:
- (a) consider the representations made and take a decision;
 - (b) convey the decision to the employee/ entity and where the decision is to proceed with the recovery, provide the Finance Component with all relevant documents with a view to initiating processes relating to the recovery of the debt in accordance with processes relating to the recovery of in-service and out of service debt.

12. RECOVERY OF IN-SERVICE DEBT

- 12.1 Upon receipt of the notification relating to the debt, the Finance Component must calculate the debt amount before capturing the debt on BAS.
- 12.2 The Finance component, must:
- b) advise the employee concerned in writing of the debt amount and request the completion of the "*Acknowledgement of Debt Form as well*" as "*Consent for Recovery Form*".
 - c) with regard to the amount to be recovered, the Finance Component must in respect of monthly deductions, endeavour to determine the amount to be recovered with due regard Section 34 of the BCEA which provides for the amount to be recovered not to exceed 25% of the employee's remuneration.
 - d) Upon receipt of the consent forms, the Finance Component must effect the necessary recovery as determined in accordance with (b) above.
 - e) Written records of such consultation must be maintained by the relevant finance Component and for this purpose a debtor's file must be maintained.
- 12.3 In instances where the employee fails to consent or make alternative arrangements for payment, the Finance Component must:

- (a) Inform the employee that due to failure to consent or make alternative arrangements for the payment of the debt, the legal processes relating to the recovery of debt will proceed.
- (b) Simultaneously arrange for all relevant documents to be forwarded to the Director: Legal Services for initiating processes relating to the recovery of the debt.

12.4 Where the employee has consented to the recovery of debt by way of monthly deductions and exits the services of the Department before the full amount of debt has been recovered, the processes relating to the recovery of out of service debt must be followed.

13. RECOVERY OF OUT OF SERVICE DEBT

13.1 Upon receipt of the notification relating to the debt, the Finance Component must calculate the debt amount before capturing the debt on BAS. The Finance component must, immediately communicate in writing with the employee with the intention of ascertaining the method in which the debt is to be settled. In this regard the employee/entity concerned must be made aware of the following options available to him or her:

- (i) Settle the debt amount in full through a cash payment;
- (ii) Enter into an agreement to repay the debt in reasonable instalments;
- (iii) Authorise the recovery of the debt from leave gratuity, pro rata service bonus; or
- (iv) Authorise the recovery of the debt from the Pension benefits and in which case the GEPP debt acknowledgement form must be completed and returned.

(a) In instances where the employee indicates that the debt amount including interest is to be settled in a cash payment, the Finance Component must ensure that the payment is made to the Departmental Bank Account and that a copy of the receipt is obtained and placed on file.

(b) In instances where the employee indicates that the debt is to be settled in reasonable instalments the Finance Component must ensure that the Department's Proforma Agreement to this effect is concluded. Thereafter payments in keeping with the agreement must be monitored and in the event of default in payment, the matter must be referred to the Director: Legal Services for further attention. The repayment must also be reviewed at least biannually to assess whether the debtor's financial position has changed and whether the debtor can pay a higher instalment in which case a new agreement must be completed.

(c) In instances where the debt is to be recovered from leave gratuity and/or pro-rata service bonus the Finance Component must give effect to the recovery.

13.2 In instances where the debt or any part of the debt is to be recovered from the pension benefits, the Finance Component must complete the Departmental Liability Form (E60) which must clearly indicate the following:

- a) The amount of the debt to be recovered and this must include the interest accrued;
- b) The reason/s for the debt;
- c) The date when the debt arose and;
- d) Whether the debt is interest bearing.

- 13.3 The Finance Component must ensure that the Departmental Liability Form (E60) together with the GEPF Debt Acknowledgement Form and motivation, where applicable, is forwarded to the HR Component for further attention.
- 13.4 The HR Component, upon receipt of the documents referred to in paragraphs 13.7 above, must arrange for the debt amount to be reflected in the Pension Exit Form (Z102) for recovery from the Pension Fund.
- 13.5 The Finance Component must monitor the recovery from the Pension Fund and ensure that the debt is correctly allocated and offset. In instances where the recovery is not effected or is partly effected, all relevant documents relating to the debt must be forwarded to the Director: Legal Services for instituting legal proceedings.

14. DEBT IN RESPECT OF ENTITIES

The recovery of debt from Entities must be dealt with in accordance with the processes relating to the recovery of debt for out of service employees. However, the option of recovery from the pension benefits and/or leave gratuity will not be applicable in their cases.

15. TRANSFERS

- 15.1 In cases of employees transferring from one department to another whilst still owing the former department money, such debt may be recovered by the receiving department and paid over to the transferring department provided that the receiving department agrees to effect the recovery and the employee concerned consents to such recovery.
- 15.2 If there is no consent as reflected in 15.1 above or there remains a dispute between the employee and the transferring department about the debt itself, the responsibility for the recovery of the debt shall lie with the transferring department. In such instances, all relevant documents relating to the debt must be forwarded to the Director: Legal Services for instituting legal proceedings.

16. INTEREST ON DEBT

- 16.1 Debts due to the State from in-service employees will be recovered without interest, with the exception of the following categories of debt, which shall be levied with interest at a rate as determined by the Minister in terms of Section 80(1) (b) of the PFMA.
- (a) Wrongly granted remuneration due to fraudulent activity.
 - (b) Loss and/or damage which originates as a result of circumstances where *mala fides* or the intentional causing of losses or damages were present, or where the person concerned has left the employment of the State;
 - (c) Breach of contract or any *delictual* claim relating to the contractual relationship and such interest is calculated from the date on which the contract was breached.
 - (d) A State Guarantee Debt which is subject to interest from the date of payment to the Financial Institution.

- 16.2 Debts due to the State by debtors who are not in the employment of the State are to be recovered with interest at a rate as determined by the Minister in terms of section 80(1) (b) of the PFMA.
- 16.3 Interest only starts to accrue after the 30 (Thirty) calendar days "*mora*" period. The notice to the debtor must state that interest starts accruing 30 days after the date of notification or another time period agreed upon.
- 16.4 Interest is calculated on the decreasing balance of the debt and must not be capitalised nor exceed the original capital amount.

17. REFERRAL OF DEBTS TO THE OFFICE OF THE STATE ATTORNEY

- 17.1 In terms of paragraph 11.2.1(b) of the Treasury Regulations and in cases where it is necessary and economical to enforce the recovery of a debt by means of legal steps the Director: Legal Services must refer the matter to the office of the state attorney, any other appointed Attorney or agency for the recovery of the debt.
- 17.2 Should the matter be referred to the State Attorney, any appointed attorney or agency the letter of instruction to the aforementioned must in respect of each referral include the following:
- a) Name(s) and address of the debtor;
 - b) History of the debt, with all relevant dates, including an explanation of how the debt was incurred; and
 - c) Copies of all correspondence and documents pertaining to the debt;
- 17.3 If the debt is not recovered despite having followed the legal procedure and the Director: Legal Services is of the view that there is little or no prospect of recovery, the Director: Legal Services must inform the relevant Finance Component accordingly.

18. INSTANCES WHERE DEBT MAY BE WRITTEN-OFF

- 18.1 Upon being advised by the Director: Legal Services that the debt is irrecoverable, the Finance Component will be required to give consideration for its write-off and a submission in this regard must be forwarded to the Head of Department for approval.
- 18.2 A debt may be considered for write off in the following circumstances:
- (a) all reasonable steps have been taken to recover the debt and the debt is irrecoverable;
 - (b) Recovery of the debt would be uneconomical
 - (c) Recovery would cause undue hardship to the debtor i.e. the debtor will be deprived of the minimal essential means of livelihood or the assets of the debtor are indispensable or of relatively little value
 - (d) It would be to the advantage of the state to effect a settlement of its claim or to waive the claim.

(e) the debt is irrecoverable owing to:

- (i) the debtor having neither assets nor income;
- (ii) the failure to trace the debtor despite all reasonable steps being taken;
- (iii) the Department's claim against an insolvent estate or an estate that is being administered as insolvent, having been proved properly and in good time and the dividend of the creditors being insufficient to meet the debt;
- (iv) the weak financial position of an estate, the danger therefore existing that if the debt is proved a contribution will have to be paid by the estate;
- (v) the debtor having emigrated or whose whereabouts are unknown, leaving no assets to satisfy the claim in the event of a judgment in execution;
- (vi) payments from the deceased employee being received by other individuals other than the immediate family of the deceased;
- (vii) a situation where the cost of recovering the debt may exceed the amount of the debt due to the Department and where prospects of recovery remains uncertain; or
- (viii) the debt having prescribed

18.3 Debts are written off when identified as irrecoverable and are limited to the amount of savings and/or under-spending of voted funds.

18.4 All debts written off must be disclosed in the annual financial statements of the Department.

19. EFFECT OF PRESCRIPTION ON DEBT

19.1 Debt prescribes after various periods depending on the type of debt. For the purposes of this policy and the debt due to the Department the Prescription shall be three (3) years (any other debt except where an Act of Parliament provides otherwise).

19.2 Prescription is suspended where the debtor is outside the country and/or when the debt is the object of dispute subjected to arbitration or legal proceedings or a claim filed against a deceased's estate.

19.3 Prescription is interrupted by an acknowledgement of liability by the debtor and prescription begins to run from the date of acknowledgment or the date of the last amount/instalment paid by the debtor.

20. TRACING OF DEBTORS

In the event that the debtor's address is not known, the Finance Component, appointed Attorney or Agency must take all reasonable steps to trace the debtor and this may include collaboration with other government agencies as well as the use of a tracing agents.

21. REPORTS AND OTHER RESPONSIBILITIES

21.1 Management information concerning the status of all debtors of the Department must be reported on, on a quarterly basis, as provided for in National and Provincial Treasury Circulars, as well as other Departmental directives.

- 21.1 Management information concerning the status of all debtors of the Department must be reported on, on a quarterly basis, as provided for in National and Provincial Treasury Circulars, as well as other Departmental directives.
- 21.2 Quarterly and annual reporting will also be done in terms of the national directives for the Interim and the Annual Financial Statements.

22. IMPAIRMENT

- 22.1 The Department tests for impairment where there is an indication that a receivable may be impaired. An assessment of whether there is an indication of possible impairment is done at each reporting date.
- 22.2 The debt age analysis will inter alia be used in identifying the amount to be declared in the Statement of Financial Position (POS).
- 22.3 Out of service debtors in the more than 3 (three) years category (based on the take-on date) would be an estimated guide for impairment (issues around prescription).

23. CONSEQUENCE MANAGEMENT

It is incumbent on all Supervisors/Heads of Institutions as well as responsible officials in the relevant Components to comply strictly with these measures and procedures. Any deviations will be viewed in a serious light and will be investigated with a view to not only instituting disciplinary action but to also consider recovering any overpayment from the transgressing official.

24. REVIEW OF THIS POLICY

This policy will be reviewed every 2 (two) years from date of approval. However should there be an amendment to any law or prescripts which affects this policy within the period of 2 (two) years then this policy will be amended to comply with such law or prescript.

25. FORMAL APPROVAL

This policy is approved for implementation with effect from 1st December 2019 and replaces all other Debt Management Policy issued before this date.


SIGNATURE

HOD.
DESIGNATION

04/11/2019
DATE

