



Debtors (Scotland) Act 1987

1987 CHAPTER 18

PART III

DILIGENCE AGAINST EARNINGS

Earnings arrestments

47 General effect of earnings arrestment.

- (1) Subject to section 69 of this Act, an earnings arrestment shall have the effect of requiring the employer of a debtor, while the arrestment is in effect, to deduct a sum calculated in accordance with section 49 [^{F1}or 49A] of this Act from the debtor's net earnings on every pay-day and, as soon as is reasonably practicable, to pay any sum so deducted to the creditor.
- (2) Subject to sections 59 (priority among arrestments), 62 (relationship of conjoined arrestment order with certain other arrestments) and 90 (provisions relating to charges for payment) of this Act, an earnings arrestment—
 - (a) shall [^{F2}, subject to subsection (3) below,] come into effect on the date of its execution, being the date on which a schedule in the form prescribed by Act of Sederunt (to be known as an “earnings arrestment schedule”) is served on the employer; and
 - (b) shall remain in effect until the debt recoverable has been paid or otherwise extinguished, the debtor has ceased to be employed by the employer, or the arrestment has been recalled or abandoned by the creditor or has for any other reason ceased to have effect.
- [^{F3}(3) An earnings arrestment shall not come into effect unless, no earlier than 12 weeks before the date on which the earnings arrestment schedule is served, the creditor has provided the debtor with a debt advice and information package.
- (4) In this section and in sections 51(2A) and 60(3A) of this Act, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).]

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Textual Amendments

- F1** Words in s. 47(1) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 200\(1\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 13, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)
- F2** Words in s. 47(2)(a) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 201\(1\)\(a\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 14, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)
- F3** S. 47(3)(4) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 201\(1\)\(b\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2008/115, art. 3(1)(d) (with arts. 4-6, 10, 14, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), art. 7; (31.1.2011) by [S.S.I. 2011/31](#), art. 5(a); and (4.10.2014) by [S.S.I. 2014/173](#), arts. 1(2), 3)

48 Debt recoverable by earnings arrestment.

- (1) Subject to subsections (2) and (3) below, the debt recoverable by an earnings arrestment shall consist of the following sums, in so far as outstanding—
- (a) any ordinary debt and any expenses due under the decree or other document on which the earnings arrestment proceeds;
 - (b) any interest on those sums which has accrued at the date of execution of the earnings arrestment; and
 - (c) the expenses incurred in executing the earnings arrestment and the charge which preceded it.
- (2) In relation to arrears of maintenance, the ordinary debt referred to in subsection (1)(a) above shall be the amount of those arrears less any sum which the debtor is entitled to deduct from that amount under any enactment in respect of income tax.
- (3) Any sum mentioned in subsection (1) above shall be included in the debt recoverable only if, and to the extent that, it is specified in the earnings arrestment schedule.
- (4) It shall be competent for a creditor to enforce payment of more than one debt payable to him by the same debtor by means of a single earnings arrestment, whether the arrestment is executed in pursuance of the same warrant or of 2 or more different warrants authorising diligence.

49 Deductions from net earnings to be made by employer.

- (1) [^{F4}Subject to section 49A of this Act,] the sum to be deducted under section 47 of this Act on any pay-day shall be—
- (a) where the debtor's earnings are payable weekly, the sum specified in column 2 of Table A in Schedule 2 to this Act opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
 - (b) where his earnings are payable monthly, the sum specified in column 2 of Table B in that Schedule opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
 - (c) where his earnings are payable at regular intervals of a whole number of weeks or months, the sum arrived at by—

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- (i) calculating what would be his weekly or monthly net earnings by dividing the net earnings payable to him on the pay-day by that whole number (of weeks or months, as the case may be);
 - (ii) ascertaining the sum specified in column 2 of Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under subparagraph (i) above fall; and
 - (iii) multiplying that sum by the whole number (of weeks or months, as the case may be).
- (2) Where the debtor's earnings are payable at regular intervals other than at intervals to which subsection (1) above applies, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—
 - (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day by the number of days in the interval;
 - (b) ascertaining the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
 - (c) multiplying that sum by the number of days in the interval.
- (3) Where the debtor's earnings are payable at irregular intervals, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—
 - (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day—
 - (i) by the number of days since earnings were last paid to him; or
 - (ii) if the earnings are the first earnings to be paid to him by the employer, by the number of days since he commenced his employment with the employer;
 - (b) taking the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
 - (c) multiplying that sum by the number of days mentioned in paragraph (a) above.
- (4) Where on the same pay-day there are paid to the debtor both earnings payable at regular intervals and earnings which are not payable at regular intervals, for the purpose of arriving at the sum to be deducted on that pay-day under section 47 of this Act, all those earnings shall be aggregated and treated as earnings payable at the regular interval.
- (5) Where earnings payable to a debtor at regular intervals are paid to him on one pay-day and earnings which are not payable at regular intervals are paid to him on a different pay-day, the sum to be deducted on each of those pay-days under section 47 of this Act in respect of those earnings which are not paid at regular intervals shall be 20 per cent. of the net earnings paid to him on that pay-day.
- (6) Where earnings are paid to a debtor by 2 or more series of payments at regular intervals—
 - (a) if the intervals are of different lengths—
 - (i) for the purpose of arriving at the sum to be deducted under section 47 of this Act, whichever of subsections (1) and (2) above is appropriate shall apply to the series with the shortest interval; and

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- (ii) in relation to the earnings paid in any other series, the said sum shall be 20 per cent. of the net earnings;
 - (b) if the intervals are of the same length and payments in more than one series are payable on the same day—
 - (i) the payments in those series shall be aggregated and whichever of subsections (1) and (2) above is appropriate shall apply to the aggregate; and
 - (ii) paragraph (a)(ii) above shall apply to every other series;
 - (c) if the intervals are of the same length and no 2 payments are payable on the same day paragraph (a)(i) above shall apply to such series as the employer may choose, and paragraph (a)(ii) above shall apply to every other series.
- (7) The Lord Advocate may, by regulations, vary—
- (a) Tables A, B and C of Schedule 2 to this Act;
 - (b) the percentage specified in subsections (5) and (6)(a)(ii) above,
- and such regulations may make different provision for different cases.
- (8) Subject to section 69(1) and (2) of this Act, regulations under subsection (7) above shall not apply in relation to an existing earnings arresment unless and until the creditor or the debtor intimates the making of the regulations to the employer in the form prescribed by Act of Sederunt.

Textual Amendments

- F4** Words in s. 49(1) inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 200\(2\), 227\(3\)](#) (with [s. 223](#)); [S.S.I. 2008/115](#), [art. 3\(1\)\(d\)](#) (with [arts. 4-6, 10, 13, 15](#)) (as amended: (23.2.2009) by [S.S.I. 2009/67](#), [art. 7](#); (31.1.2011) by [S.S.I. 2011/31](#), [art. 5\(a\)](#); and (4.10.2014) by [S.S.I. 2014/173](#), [arts. 1\(2\), 3](#))

[^{F5}49A Deductions where net earnings include holiday pay

- (1) This section applies where—
- (a) the debtor's earnings are paid at regular intervals; and
 - (b) on one pay-day (in this section, the “normal pay-day”) there are paid to the debtor both—
 - (i) earnings normally payable on that pay-day (in this section, “normal earnings”); and
 - (ii) earnings such as are mentioned in subsection (2) below (in this section, “holiday pay”).
- (2) Holiday pay is earnings which—
- (a) are paid in respect of a period of annual leave or public holiday; and
 - (b) would, were they not paid in respect of such leave or holiday, have been paid on a pay-day other than the normal pay-day.
- (3) In arriving at the sum to be deducted under section 47 of this Act on the normal pay-day, subsections (4) to (8) below shall apply.
- (4) Calculate in accordance with section 49 of this Act the sum, if any, which would be deducted from the normal earnings if the holiday pay had not been paid on the normal pay-day.

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- (5) Where—
- (a) the debtor's normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months; and
 - (b) all of the holiday pay relates to a whole number of weeks or months,
- the sum, if any, to be deducted from the holiday pay shall be the sum arrived at by applying sub-paragraphs (i) to (iii) of section 49(1)(c) of this Act to the holiday pay as if it were the net earnings mentioned in that sub-paragraph (i).
- (6) Where the debtor's normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months but part of the holiday pay relates to a whole number of weeks or months and part does not, the sum, if any, to be deducted from the holiday pay shall be the sum arrived at by—
- (a) in relation to the part of the holiday pay which relates to a whole number of weeks or months, applying subsection (5) above to that part;
 - (b) in relation to the part of the holiday pay which does not relate to a whole number of weeks or months, applying paragraphs (a) to (c) of section 49(2) of this Act to that part of the holiday pay as if it were the net earnings mentioned in that paragraph (a); and
 - (c) aggregating the sums arrived at as mentioned in paragraphs (a) and (b) above.
- (7) Where—
- (a) the debtor's normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months but none of the holiday relates to such a whole number of weeks or months; or
 - (b) the debtor's normal earnings are payable at regular intervals other than at intervals to which paragraph (a) above applies,
- the sum, if any, to be deducted from the holiday pay shall be arrived at by applying paragraph (b) of subsection (6) above to the holiday pay.
- (8) Aggregate—
- (a) the deduction, if any, calculated under subsection (4) above; and
 - (b) the deduction, if any, calculated under subsection (5), (6) or, as the case may be, (7) above.]

Textual Amendments

F5 S. 49A inserted (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\), ss. 200\(3\), 227\(3\)](#) (with s. 223); [S.S.I. 2008/115, art. 3\(1\)\(d\)](#) (with arts. 4-6, 10, 13, 15) (as amended: (23.2.2009) by [S.S.I. 2009/67, art. 7](#); (31.1.2011) by [S.S.I. 2011/31, art. 5\(a\)](#); and (4.10.2014) by [S.S.I. 2014/173, arts. 1\(2\), 3](#))

50 Review of earnings arrestment.

- (1) If the sheriff is satisfied that an earnings arrestment is invalid or has ceased to have effect he shall, on an application by the debtor or the person on whom the earnings arrestment schedule was served, make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances; and the sheriff clerk shall intimate any order under this subsection to the debtor, the creditor and the person on whom the earnings arrestment schedule was served.

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- (2) An order under subsection (1) above declaring that an arremtsment is invalid or has ceased to have effect shall not be subject to appeal.
- (3) The sheriff, on an application by the debtor, the creditor or the employer, may make an order determining any dispute as to the operation of an earnings arremtsment.
- (4) Without prejudice to section 57(5) of this Act, the sheriff, when making an order under subsection (3) above, may order—
 - (a) the reimbursement of any payment made in the operation of the arremtsment which ought not to have been made; or
 - (b) the payment of any sum which ought to have been paid in the operation of the arremtsment but which has not been paid.
- (5) An order under subsection (4) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate from such date as the sheriff shall specify in the order.

Modifications etc. (not altering text)

- C1** S. 50(3) modified (1.4.2008) by [The Enforcement of Fines \(Diligence\) \(Scotland\) Regulations 2008](#) (S.S.I. 2008/104), regs. 1(1), **2(b)(i)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to [legislation.gov.uk](#). S.I. 2018/1125, reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 8(1)(d)(e) substituted for s. 8(1)(d) by [2007 asp 3 Sch. 5 para. 16\(7\)\(a\)\(v\)](#)