

EXECUTIVE NOTE

The Diligence against Earnings (Variation) (Scotland) Regulations 2006 SSI/2006/116

The above instrument was made in exercise of the powers conferred by sections 49(7)(a), 53(3), 63(6) and 71 of the Debtors (Scotland) Act 1987 (“the 1987 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of this instrument is to:

- Amend the statutory tables of deductions, contained in Schedule 2 to the 1987 Act, used by employers operating the diligence of earnings arrestment, so that the amended tables reflect the changes in the Average Earnings Index since January 2001;
- Increase the no payment threshold for the diligence of a conjoined arrestment order; and
- Increase the fee payable to employers for operating the diligences of earnings arrestment, current maintenance arrestment and a conjoined arrestment order.

The 1987 Act introduced the new diligence of earnings arrestment. This is designed to enforce payment of a sum due at the date of service of the arrestment on the employer of a debtor. The employer makes a deduction each pay day from wages or salary due to the debtor and pays that amount to the creditor, the deduction being calculated by reference to the statutory tables.

The deductions are based on a sliding scale so that a smaller proportion of the wages or salary is deducted from debtors in lower income bands, and a higher proportion from debtors in high income bands. Separate tables are provided for daily, weekly and monthly paid employees. To protect those on low incomes there is a fixed threshold below which no deduction can be made.

The increase in the Average Earnings Index since 2001 has been in the order of 17.5%. The instrument therefore makes the appropriate change to the statutory tables, and to the fixed payment threshold.

The 1987 Act also introduced the new diligence of a conjoined arrestment order, which enables two or more creditors to share a single deduction from the wages or salary of a debtor. The instrument increases the fixed threshold below which no deduction can be made for this diligence, in line with the increase for earnings arrestment.

The 1987 Act also introduced a fee of 50 pence that employers could charge debtors each time an earnings arrestment, a current maintenance arrestment or a conjoined arrestment order is executed. The Executive consulted on an increase in that fee to £1 in “Enforcement of Civil Obligations in Scotland”, published in April 2002. A rise in the level of fee was strongly supported, and the instrument therefore increases the employer’s fee from 50 pence to £1.

Consultation

The following bodies have been consulted on a draft of the instrument and, where a response was received, offered no adverse comments:

Advisory Council of Messenger-at-Arms
and Sheriff Officers
CBI, Scotland
Convention of Scottish Local Authorities
Citizens Advice Scotland
DWP
Faculty of Advocates
Federation of Small Businesses
HM Revenue and Customs
Law Society of Scotland
Money Advice Scotland
Payroll Specialist Group
Scottish Chambers of Commerce
Scottish Civic Forum
Scottish Consumer Council
Scottish Court Service
Sheriff Courts Rules Council
Sheriffs' Association
Sheriffs Principal
Society of Messenger-at-Arms and Sheriff Officers

Financial Effects

The instrument has no financial effects on the Scottish Executive or local government, except as employers or creditors.

Employers will need to adjust their payroll systems to take account of the changes, but the administrative costs they will incur are balanced by the increase in the employer's fee.

Creditors will be paid less under the amended tables in respect of each band (except the top band which is open ended) than is the case at present. However, they are not considered to be in a worse position in any absolute sense. The changes made by the instrument mean that creditors will no longer benefit from the effect of wages inflation since 2001, which has until now meant that in each successive year a larger proportion of wages and salaries has been subject to the diligences.

Regulatory Impact Assessment

As this instrument does not impose any additional burden on business, a Regulatory Impact Assessment has not been completed in respect of this instrument.

Scottish Executive Justice Department