Final
Business and Regulatory Impact Assessment

Title of Proposal
The Diligence Against Earnings (Variation) (Scotland) Regulations 2015

Purpose and intended effect

- **Background**
  The diligence against earnings arrestment is designed to enforce payment of a sum due to a creditor by making a deduction from the debtor's earnings. The debtor's employer makes a deduction each pay day from the debtor's wages or salary and pays that amount to the creditor. Schedule 2 to the Debtors (Scotland) Act 1987 provides the statutory tables used to calculate the amount an employer must deduct when a debtor is subject to diligence against earnings.

  The lower monthly threshold for earnings arrestment also determines the Protected Minimum Balance ("PMB") in arrestment. The PMB was introduced to arrestment by the Bankruptcy and Diligence etc. (Scotland) Act 2007 and provides an important protection for those subject to arrestment of their bank account, ensuring they are not left destitute by the arrestment. The PMB sets out a minimum amount which is protected from the arrestment. Any proposal to increase the lower monthly threshold will increase this protection.

  In 2009, the Diligence against Earnings (Variation) (No.2) (Scotland) Regulations introduced a new methodology for calculating deductions from earnings. Coming into effect from April 2010, this new methodology was designed to be straightforward for employers to operate and fairer to debtors. At this time, the tables were uprated based on increases to average earnings. However, in 2012 when the last review took place, inflation had surpassed wage increases. To ensure that those subject to earnings arrestment did not face additional hardship, the Diligence against Earnings (Variation) (Scotland) Regulations 2012 were based on inflation rather than income increases.

  Ministers gave an undertaking to review the deduction tables every 3 years to take into account changes in average earnings. The tables were last reviewed in 2012.

- **Objective**
  To update the tables contained in Schedule 2 to the Debtors (Scotland) Act 1987, in accordance with sections 49(7)(a), 53(3) and 63(6) of the Debtors (Scotland) Act 1987.

- **Rationale for Government intervention**
  To ensure the legislation continues to strike the right balance and fairness between creditors and debtors.

  These regulations contribute to the Scottish Government Economic Strategy to make Scotland a more successful country with opportunities for all to flourish, through increasing sustainable economic growth, aligned by the delivery of the following national outcomes:

Business – A culture of entrepreneurship, leadership, creativity and international ambition

Inequalities – We have tackled the significant inequalities in Scottish society

Employment opportunities – Realising our full economic potential with more and better employment opportunities for our people

Communities – We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others .

Consultation

- **Within Government**
  We consulted a statistician from the Scottish Government's Statistician Group to review the Arrested Earnings deduction tables using the same model as the previous review in 2012. The 2015 review uses the inflation figures published in the Consumer Price Inflation, June 2015 report by the Office for National Statistics ("ONS"), to determine the percentage change to be applied to the tables.

- **Public Consultation**
  No public consultation was undertaken in relation to the Diligence against Earnings (Variation) (Scotland) Regulations 2015 as these relate to the Debtors (Scotland) Act 1987 which has already passed through the Scottish Parliament and received Royal Assent. These regulations are a consequence of the ministerial undertaking to review the statutory tables contained in Schedule 2 to the Debtors (Scotland) Act 1987 every 3 years.

- **Business**
  We held no face-to-face discussions with businesses. However, subsequent to the Diligence Against Earnings (Variation) (Scotland) Regulations being passed through the Scottish Parliament, we circulated the proposed changes to stakeholder groups representing those who may be affected by these regulations.

  We consulted the following stakeholder groups seeking their comments:

  British Bankers Association
  Money Advice Scotland
  Citizens Advice Scotland
  Scottish Court Service
  Society of Messengers at Arms and Sheriff Officers
  The Chartered Institute of Payroll Professionals
  Scottish Clearing Banks
  Payroll Software developers
  The Institute of Directors
  Confederation of British Industry

Federation of Small Businesses
Scottish Council for Development and Industry

Concerns – Impact on Large Creditors

The majority of stakeholders who responded were in principle in agreement with the proposed changes. However, one stakeholder was concerned about the potential impact the uprating of the tables would have on large creditors such as Local Authorities. The same stakeholder questioned the rate of inflation and asked that the changes take account of the impact they will have on large public bodies; and that the proposed increase is reduced.

In calculating the revised tables we used the inflation figures published in the Consumer Price Inflation, June 2015 report by ONS. The increase in the Earnings Arrestment Tables is catching up with actual inflation from the last 3 years as follows.

2012		2013		2014		Uprated 2015
£460.06	3.02%	£473.95	2.44%	£485.52	1.75%	£494.01
£1,662.88	3.02%	£1,713.10	2.44%	£1,754.90	1.75%	£1,785.61
£2,500.00	3.02%	£2,575.50	2.44%	£2,638.34	1.75%	£2,684.51

The changes are in line with the review conducted in 2012. Any increase to the diligence against earnings tables will result in deductions stopping for a small number of debtors who are on very low incomes. We anticipate that in most cases creditors will continue to receive payment although it may take longer to repay the debt.

It is important to ensure that any proposed changes continue to strike the right balance between creditors and debtors. By introducing the proposed changes this will allow debtors to retain more money, giving them more spending power, enabling them to contribute towards a stronger economy.

Options

Option 1 - No change

To adopt the no change option and continue with the current deductions would require no change in legislation allowing stakeholders to maintain the status quo.

Sectors and groups affected
The no change option would mean that Debtors would not be subject to any increase or decrease in deductions, although the rise in inflation means they effectively have less spending power.

Benefits
Retaining the status quo would mean that the current deduction tables continue to apply and employers would not have to update their automated payroll systems to accommodate any changes.

There would be no need for a debtor to make budgetary adjustments as there will be no change in deductions from earnings. This is also true for those subject to arrestment of funds in their bank account as they would receive the same amount of protection as they do at present and those subject to deductions from their earnings for child support payments would continue to have the same protected daily rate applied.

Where there is a conjoined arrestment order in place the Scottish Court Service ingathers the funds from the employer, calculates the sum due to each creditor and distributes the funds to the creditors. Therefore, no change in the deduction tables would mean there is no need for the Scottish Court Service to issue revised tables or instructions to sheriff clerks.

Costs
While the deduction tables would not be subject to change at this point in time, to adopt this option may result in greater, and more noticeable, increase in deductions from earnings in the future. This is contrary to the method of deduction under the 2009 and 2012 Regulations, which were introduced to minimise the burden on the debtor by implementing a gradual increase in deductions from earnings.

Option 2 – Update tables accounting for inflation by increasing all thresholds proportionally

This option replicates the methodology applied in the 2012 Diligence review. However, at that time the upper threshold remained unchanged because evidence suggested that upper income households felt the effects of inflation to a smaller extent than those on lower income However, we do not consider it appropriate to continue to leave the upper threshold unchanged for a further 3 years. Therefore, Option 2 updates the upper income threshold to account for inflation.

Sectors and groups affected
The proposed changes to the tables contained in Schedule 2 to the Debtors (Scotland) Act 1987 will impact on the following sectors and groups: debtors, creditors, payroll software developers, employers, banks and Sheriff Court clerks.

Benefits
By adopting this model, all debtors will see a small decrease in the percentage of income arrested compared to 3 years ago. For a small number of very low income debtors deductions from earnings will cease.

There would be increased protection to those who are subject to arrestment of funds in their bank account. The Protected Minimum Balance in arrestment would increase from £460.06 to £494.01, preserving this sum for the debtor.

The daily rate used to calculate current maintenance arrestment will be increased slightly, providing at least £1.12 per day of additional protection for those on the lowest incomes.

Costs
There is no cost to the Scottish Government to implement this option, however, it is recognised that there is potentially a small cost to employers. Introducing these changes from April 2016, to coincide with annual payroll system updates, would minimise these costs.

Scottish Firms Impact Test
As previously mentioned, we held no face to face discussions with businesses. However, prior to the Diligence against Earnings (Variation) (Scotland) Regulations 2015 being passed through the Scottish Parliament we circulated the proposed changes to stakeholder groups representing those who may be affected by these regulations.

Competition Assessment
Having considered the Competition and Markets Authority (CMA) competition assessment questions I can confirm that these changes will apply equally to all who engage with the regulations. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the regulations.

- Will the proposal directly limit the number or range of suppliers? No
- Will the proposal indirectly limit the number or range of suppliers? No
- Will the proposal limit the ability of suppliers to compete? No
- Will the proposal reduce suppliers' incentives to compete vigorously? No

Test run of business forms
No new business forms have been introduced.

Legal Aid Impact Test

The Scottish Legal Aid Board has confirmed that this should not impact on legal aid expenditure.

Enforcement, sanctions and monitoring
The Accountant in Bankruptcy, an agency of the Scottish Government, has responsibility for the legislation relating to earnings arrestment. On receipt of an earnings arrestment schedule the debtor's employer must enforce the terms of the earnings arrestment. Section 57 of the Debtors (Scotland) Act 1987 details the action to be taken where an employer fails to comply with the regulations.

Sheriff Officers, in accordance with section 84 of the Debtors (Scotland) Act 1987, will submit to the Scottish Government, on a quarterly basis, statistical data on the use of the diligence of arrestment. This will allow the Scottish Government to monitor the use of this diligence and identify any trends that may require further investigation.

Implementation and delivery plan
The Diligence against Earnings (Variation) (Scotland) Regulations 2015 will be brought into force on the 6 April 2016. The Accountant in Bankruptcy will publish the introduction of the regulations on their website. The new statutory tables will also be incorporated in the legislation published on the legislation.gov.uk website.

Post-implementation Review

To evaluate the impact of the new legislation the Scottish Government gave an undertaking to review the diligence against earnings tables every 3 years. Therefore, the next review will be undertaken in 2018.

In addition to the above, the Scottish Government, will analyse, on a yearly basis, the statistical data supplied by Sheriff Officers on diligence against earnings, to identify any trends that may require further investigation. The Scottish Government will review the findings of this investigation and consider whether any changes are necessary to the regulations or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary Committees where necessary. A final report detailing the findings and conclusion of the review will be published.

Summary and recommendation

The recommended option is option 2. By updating the tables in this way it is possible to make some allowance for the effect of inflation on everyone.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	For those who interact with this legislation there would be no change.	No financial costs would be incurred. However, to make no change at this time, may result in a greater increase in deductions from earnings in the future. This is contrary to the introduction of the new method introduced in 2010, which was introduced to minimise the impact on the debtor by implanting a gradual increase in deductions from earnings.
2	By adopting this model all income level households will see a small decrease in the percentage of their income that is arrested compared with the previous 3 years. There would be increased protection to those who are subject to arrestment of funds in their bank account. The daily rate used to calculate current maintenance arrestment will be increased slightly, providing additional protection for those on the lowest incomes.	There is no financial cost to the Scottish Government and potentially a small financial cost to employers. However, it is anticipated that the changes can be incorporated in the annual payroll systems update, thereby minimising costs.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name
Minister's title

Scottish Government Contact point: