

POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2015

S.S.I. 2015/370

1. The above instrument has been made in exercise of the powers conferred on Scottish Ministers by sections 49(7)(a), 53(3) and 63(6) of the Debtors (Scotland) Act 1987 (“the 1987 Act”) and all other powers enabling them to do so. It is subject to negative resolution procedure.

Policy Objectives

2. This instrument amends sections 53(2)(b) and 63(4)(b) of, and Schedule 2 to the 1987 Act and replaces the Diligence against Earnings (Variation) (Scotland) Regulations 2012 (S.S.I. 2012/308) (“the 2012 Regulations”), although that instrument is retained for transitional purposes.

3. This instrument will increase debtor protection by raising the threshold beneath which deductions may not be taken from earnings by arrestment.

4. Schedule 2 of the 1987 Act, as updated by successive Regulations, sets out the deductions made by employers when a debtor is subject to a diligence against earnings (earnings arrestment). The Scottish Ministers gave a commitment to review the tables every three years. The deduction tables were last reviewed in 2012.

5. The tables contained in the 2015 Regulations are calculated based on the inflation figures published in the Consumer Price Inflation, June 2015 report by the Office of National statistics’.

6. The instrument updates current tables to take account of inflation, updating all thresholds. The process of making deductions will not change and will continue to be both straightforward for employers to operate and fair to debtors who are subject to diligence against their earnings.

7. A mechanism is provided to calculate deductions on a weekly, monthly and daily basis. To protect the lowest earners, a minimum deduction remains in place for weekly, monthly and daily earnings.

8. The rate used when calculating the deductions to be made under conjoined arrestment orders and current maintenance arrestments will increase to £16.24, to align it with the lower daily threshold for earnings arrestments.

9. 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 under section 73F of the 1987 Act sets a minimum amount which is protected from arrestment. This instrument increases the lower threshold to £494.01.

Consultation

10. The amendments made by this instrument are intended to make minor updating changes to sections 53 and 63 of and Schedule 2 to the 1987 Act. No formal public consultation has been carried out, although comments from stakeholders including the Society of Messengers at Arms and Sheriff Officers have been considered when drafting the instrument. These Regulations have also been shared with representatives from British Bankers Association; Money Advice Scotland; Citizens Advice Scotland; Scottish Court Services; The Chartered Institute of Payroll Professionals; Scottish Clearing Banks; Confederation of British Industry; Federation of Small Businesses; The Institute of Directors; Scottish Council for Development and Industry; and payroll software developers. Advice has been taken from a statistician from the Scottish Government's Statistician Group.

Financial Effects

11. A regulatory business impact assessment has been prepared. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government or Scottish businesses, as the regulations will take effect at the beginning of the financial year, in line with the yearly updates to payroll systems.

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