

BANKRUPTCY AND DILIGENCE ETC. (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

Commentary

Part 9 – Diligence Against Earnings

Section 199 – Simultaneous operation of arrestments against earnings where net earnings insufficient

650. This section amends section 58 of the 1987 Act so that, where a debtor is subject to both an earnings arrestment and a current maintenance arrestment, those arrestments will rank equally in the deductions from the debtor's earnings if the debtor's net earnings are not sufficient to allow deduction of the full amounts due under each. Under section 58(2) as it stood before the amendments made by this section, the earnings arrestment took priority over the current maintenance arrestment.
651. Subsection (1) inserts new subsections (2) to (4) into section 58 in place of subsection (2). These subsections set out formulae which the employer must use to calculate an equal proportion of the available net earnings to satisfy both creditors when both types of arrestment are operating at the same time.
652. Schedule 3 to the 1987 Act makes provision for the disbursement by the sheriff clerk of deductions made by a debtor's employer under a conjoined arrestment order. Again, under the law before this Act (for which see paragraph 4 of schedule 3), where the sum available for disbursement was not sufficient to allow the full amounts due to each creditor to be paid, priority was given to ordinary debts (i.e. debts which are recoverable by earnings arrestment).
653. Subsection (3) amends paragraph 4 and inserts a new paragraph 4A so that, where the sum available for disbursement is not sufficient, it is divided proportionately among the various creditors rather than priority being given to ordinary debts. Subsection (2) makes a minor amendment of section 63(5)(b) (which deals with how the debtor's employer calculates the sum to be deducted where a conjoined arrestment order is in effect) to clarify the language of that paragraph.