

# Final Business and Regulatory Impact Assessment

**Title of Proposal**

The Diligence against Earnings (Variation) (Scotland) Regulations 2018

**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 earnings of the person who has defaulted on a debt. This action can only take place when a creditor has a court order or document of debt. The employer makes a deduction each pay day from the person'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 person is subject to diligence against earnings. These Regulations will increase protection for those with debt. The Scottish Government has reviewed and updated the deduction tables every three years since 2006. The tables were last updated in 2015.

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 2012 and 2015, the tables were updated to reflect inflation. This was due to the rate of inflation being greater than the increase in earnings and ensured that those subject to earning arrestment did not face additional hardship. For this set of Regulations, we propose to revert to increasing the figures in the tables in line with the change in earnings over the review period. As was the case prior to 2012 increasing the figures in line with the change in earnings once again offers greater protection for those with debt because the change in earnings over the review period has been greater than the change in inflation. To ensure that those subject to earnings arrestment do not face additional hardship, the Diligence against Earnings (Variation) (Scotland) Regulations 2018 are therefore based on earnings increases over the review period rather than inflation.

The proposed changes to the tables introduced by these Regulations mean that someone subject to an earnings arrestment would have deductions taken if they earn more than £122.28 weekly rather than the current level of £113.68, or £529.90 monthly rather than £494.01.

**Objective**

To update the figures set out in sections 53(2)(b) and 63(4)(b), and the tables contained in Schedule 2, of the Debtors (Scotland) Act 1987, in exercise of the

powers in 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 those who are owed money and those who have debt.

These regulations contribute to the Scottish Government Purpose; to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. These are aligned by the delivery of the following national outcomes:

- **We have thriving and innovative businesses, with quality jobs and fair work for everyone.**
- **We tackle poverty by sharing opportunities, wealth and power more equally.**
- **We have a globally competitive, entrepreneurial inclusive and sustainable economy.**

### **Consultation**

#### **Within Government**

We consulted a statistician from the Scottish Government's Statistician Group to review the Diligence against Earnings deduction tables. Following this review, it was concluded that the deduction tables should be updated to account for changes in earnings.

#### **Public Consultation**

No public consultation was undertaken in relation to the Diligence against Earnings (Variation) (Scotland) Regulations 2018 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 2018 being passed through the Scottish Parliament, we published the draft regulations on the AiB website and circulated to stakeholders and equality groups so that they could to provide feedback on the impact of the changes.

### **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 a person subject to an arrestment would not be subject to any increase or decrease in deductions, although the deduction tables would not reflect the change in earnings over the review period.

### **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. However, more money would be taken from those in financial difficulty than if the tables were updated.

There would be no need for a person subject to an arrestment 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.

### **Option 2 – Update tables using the change to earnings**

This option replicates the methodology applied pre 2012. In conducting this review for the Diligence against Earnings (Variation) (Scotland) Regulations 2018 we identified that the change in earnings has surpassed inflation over the review period. Specifically, the median gross weekly earnings for all UK employees between April 2014 and April 2017 has increased by 7.3% compared with 2.9% for CPI inflation over the same period. Using the change in earnings to update the deduction tables provides further protection to those who have debt compared with updating by inflation or keeping the deduction tables unchanged. In recognition of this it is proposed that the deduction tables be updated to account for changes in earnings.

### **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: people who have debt, those who are owed money, payroll software developers, employers, banks and Sheriff Court clerks.

### **Benefits**

By adopting this model, all people subject to an earnings arrestment will see a small decrease in the percentage of income arrested compared with three years ago. For a small number of people on very low incomes, 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 £494.01 to £529.90, preserving this sum for the person in debt.

The daily rate used to calculate current maintenance arrestment will be increased slightly, providing at least £1.18 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 2019, 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 2018 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 we 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 (SLAB) anticipates that the uprating of the statutory deduction from earnings tables, in their own right, will not impact on the legal aid fund.

### **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 2018 will be brought into force on the 6 April 2019. 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 three years. Therefore, the next review will be undertaken in 2021.

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.

**Summary and recommendation**

The recommended option is option 2. By updating the tables in this way it is possible to strike the right balance between ensuring the protection given to debtors reflects the change in earnings whilst ensuring that creditors can continue to take effective action.

• **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.
2	This option replicates the methodology applied pre 2012. In conducting this review for Diligence against Earnings (Variation) (Scotland) Regulations 2018 we identified that the change in earnings has surpassed inflation over the review period. Using the change in earnings to update the deduction tables provides further protection to those who have debt compared with uprating by inflation	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.

	or keeping the deduction tables unchanged. Those subject to an earnings arrestment will see a small decrease in earnings arrested compared with three years ago for a given earnings level.	
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**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: Jamie Hepburn**

**Date: 8 November 2018**

**Minister's name** Jamie Hepburn MSP

**Minister's title** Minister for Business, Fair Work and Skills

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