Final
Business and Regulatory Impact Assessment

Title of Proposal
The Diligence against Earnings (Variation) (Scotland) Regulations 2021

Purpose and intended effect

Objective
To update the figures contained in Part 3 of the Debtors (Scotland) Act 1987. These figures relate to how much money an individual is allowed to keep before any payment can be taken from their wages to recover debts, and then sets the scale of what payments can be taken above that level.

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 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 of the Debtors (Scotland) Act 1987 ("the 1987 Act") provides the statutory tables used to calculate the amount an employer must deduct when a person is subject to diligence against earnings. The Scottish Government has reviewed and updated the deduction tables every three years since 2006. The tables were last updated in 2018.

The lower monthly threshold for earnings arrestment also determines the Protected Minimum Balance ("PMB") in a bank 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 protects those who owe money by setting out a minimum amount of funds which are protected from the arrestment. This means that not all funds in a bank account can be arrested, with a person currently being left with a minimum of £529.90 in their account. We propose to increase this protection from £529.90 to £566.51.

In 2018, we increased the figures in part 3 of the 1987 Act to account for increases in average earnings as these offered the greatest protection for those with debt because the change in average earnings over the review period was greater than the change in inflation. In considering the figures this year, we again propose to update these using the average earnings, as average earnings continue to rise at a higher rate than inflation and increasing the tables based on the increase in average earnings will offer greater protection for those with debt.

Therefore, to ensure that those subject to earnings arrestment do not face additional hardship, the Diligence against Earnings (Variation) (Scotland) Regulations 2021 are based on average earnings increases rather than inflation.

This means that someone subject to an earnings arrestment would have deductions taken if they earn more than £130.73 weekly rather than the current level of £122.28, or £566.51 monthly rather than £529.90.

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 statisticians from the Scottish Government's Statistician Group to review the Arrested Earnings deduction tables. Following this review, it was concluded that the deduction tables be updated to account for changes in average earnings.

Public Consultation
No public consultation was undertaken in relation to the Diligence against Earnings (Variation) (Scotland) Regulations 2021 as these relate to the Debtors (Scotland) Act 1987 which has already passed through the Scottish Parliament and received Royal Assent. These regulations have been reviewed every 3 years since 2006.

Business
We held no face-to-face discussions with businesses. We published the draft regulations on the AiB website and circulated to stakeholders so that they could provide feedback on the impact of the changes. This SSI is not expected to be controversial.

Proposed tables under Diligence Against Earnings (Variation) (Scotland) Regulations 2021

TABLE A: DEDUCTIONS FROM WEEKLY EARNINGS	
Net earnings	*Deduction**
Not exceeding £130.73	Nil
Exceeding £130.73 but not exceeding £472.54	£4 or 19% of earnings exceeding £130.73, whichever is the greater
Exceeding £472.54 but not exceeding £710.42	£64.94 plus 23% of earnings exceeding £472.54

Exceeding £710.42	£119.66 plus 50% of earnings exceeding £710.42

TABLE B: DEDUCTIONS FROM MONTHLY EARNINGS	
Net earnings	Deduction*
Not exceeding £566.51	Nil
Exceeding £566.51 but not exceeding £2,047.65	£15.00 or 19% of earnings exceeding £566.51, whichever is the greater
Exceeding £2,047.65 but not exceeding £3,078.47	£281.42 plus 23% of earnings exceeding £2,047.65
Exceeding £3,078.47	£518.51 plus 50% of earnings exceeding £3,078.47

TABLE C: DEDUCTIONS FROM DAILY EARNINGS	
Net earnings	*Deduction**
Not exceeding £18.63	Nil
Exceeding £18.63 but not exceeding £67.32	£0.50 or 19% of earnings exceeding £18.63, whichever is the greater
Exceeding £67.32 but not exceeding £101.21	£9.25 plus 23% of earnings exceeding £67.32
Exceeding £101.21	£17.05 plus 50% of earnings exceeding £101.21

*When applying a percentage the calculation should be done to two decimal places of a penny and the result rounded to the nearest whole penny, with an exact half penny being rounded down.

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 not require a change in legislation, and the status quo would be maintained for those subject to arrestment and those involved in administering arrestment.

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 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 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 (where 2 or more debts are being repaid through an earnings arrestment at the same time) 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 rates 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 average earnings
This option replicates the methodology applied in 2018. In conducting this review for the Diligence against Earnings (Variation) (Scotland) Regulations 2021 we identified that the change in average earnings has surpassed inflation over the review period. Using the change in average earnings to update the deduction tables provides further protection to those who have debt compared with uprating 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 average earnings.

Sectors and groups affected
The proposed changes to the figures in part 3 of 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 to 3 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 £529.90 to £566.51, preserving this sum for the person in debt.

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 a change in the deduction tables will require Scottish Court clerks to recalculate funds ingathered. The sum to be deducted from earnings subject to a current maintenance arrestment or conjoined arrestment order will increase from £17.42 to £18.63.

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 2021, to coincide with annual payroll system updates, would minimise these costs.

Any changes to the tables will affect employers who will need to instruct their software developers to programme the details of the new model as part of their annual software update. These software changes will be absorbed into normal updates made by employers to payroll systems to accommodate the new tax year. To ensure we assist the developers we need to have the Regulations through the Parliamentary process by mid December 2021 to allow them to incorporate the changes. Should the Regulations complete the Parliamentary process later than this, software providers will need to make an additional update to payroll packages after they are rolled out to employers, which will create additional costs for employers. Software providers have previously been supportive of the changes we made to the format of the tables, as amendments to systems are straightforward. We understand that providers need only change around 12 lines of data in their programming.

Scottish Firms Impact Test
As previously mentioned, we held no face to face discussions with businesses. Prior to the Diligence against Earnings (Variation) (Scotland) Regulations 2021 being laid in 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 (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
If approved by Parliament, the Diligence against Earnings (Variation) (Scotland) Regulations 2021 will be brought into force on the 6 April 2022. 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 2024.

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 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. 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 in 2018. In conducting this review for Diligence against Earnings (Variation) (Scotland) Regulations 2021 we identified that the change in average earnings has surpassed inflation over the review period. Using the change in average earnings to update the deduction tables provides further protection to those who have debt compared with uprating by inflation 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.	There is no financial cost to the Scottish Government and potentially a small financial cost to employers. 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: Ivan McKee

Date: 10^{th} November 2021

Minister's name Ivan McKee MSP
Minister's title Minister for Business, Trade, Tourism and Enterprise

Scottish Government Contact point:

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