

POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2021

S.S.I. 2021/409

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”). It is subject to the negative procedure.

<p>Purpose of the instrument. This instrument updates 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.</p>

Policy Objectives

2. This instrument amends sections 53(2)(b) and 63(4)(b), and Schedule 2 of the 1987 Act and replaces the Diligence against Earnings (Variation) (Scotland) Regulations 2018 (S.S.I. 2018/345) (“the 2018 Regulations”), although that instrument is retained for transitional purposes.

3. This instrument will increase protection for those in debt 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 person is subject to a diligence against earnings (earnings arrestment). Uprating these tables every three years aims to strike the right balance between debtor protection and effective enforcement action for creditors. The deduction tables were last reviewed in 2018.

5. The tables contained in the 2018 Regulations were calculated based on average earnings.

6. For this set of Regulations, we propose to again increase the figures in the tables based on the increase in average earnings, based on the Office for National Statistics Annual Survey of Hours and Earnings 2020. 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.

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. 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.

9. The rate used to set the amount to be deducted from earnings subject to maintenance arrestment and conjoined arrestment orders will increase from £17.42 to £18.63. This aligns with the lower daily threshold for earnings arrestments.

10. 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, which inserted new section 73F to the 1987 Act, 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 that lower threshold to £566.51.

Consultation

11. The amendments made by this instrument are intended to make minor uprating changes to sections 53 and 63 and Schedule 2 of the 1987 Act. No formal public consultation has been carried out but these Regulations have been published on the Accountant in Bankruptcy website and circulated to stakeholders and equality groups in order for them to provide feedback on the impact of the changes. Advice has been taken from a statistician from the Scottish Government’s Statistician Group.

Impact Assessments

12. A BRIA has been completed on the effects of the instrument and has been published when this instrument was laid before the Parliament. A copy can be found on [Legislation.gov.uk](https://legislation.gov.uk).

13. No equality issues were raised as part of the informal consultation process and it is considered that a full Equality Impact Assessment is not required. The changes introduced are to protect those struggling with debt and subject to an earnings arrestment, increasing the threshold where deductions can be taken from their earnings. It also offers further protections to those subject to a bank arrestment, increasing the amount that must be left in their bank account when arrested. The changes apply to all irrespective of their age, race, gender, disability or sexual orientation.

14. In view of the Fairer Scotland Duty regarding socio-economic inequalities which exists under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. The proposed changes will offer greater protection for those struggling with debts by increasing the threshold beneath which deductions may not be taken from earnings by arrestment and increasing the amount that must be left in a bank account when arrested. To protect the lowest earners, a minimum deduction remains in place for weekly, monthly and daily earnings.

Financial Effects

15. 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.

Accountant in Bankruptcy
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