POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2023

S.S.I. 2023/27

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.

Purpose of the instrument. It 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.

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 2021 (S.S.I. 2021/409) ("the 2021 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). It is usual practice to uprate these tables every three years, to maintain the right balance between debtor protection and effective enforcement action for creditors. The deduction tables were last updated in 2021. However, given the current cost crisis, reflected in high inflation over the last year, it has been decided that there is a need to uprate the tables before the expiry of the usual three-year period.

5. The figures contained in the 2021 Regulations were calculated based on the increase in average earnings, based on the Office for National Statistics Annual Survey of Hours and Earnings 2020. At that point, average earnings were rising at a higher rate than inflation and increasing the tables based on the increase in average earnings offered greater protection for those with debt. Since then, inflation has outstripped average earnings, so the figures contained in the current Regulations have been increased using the rate of CPI inflation for the period between October 2020 and October 2022.

7. The Regulations provide a mechanism 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 £150.94 weekly rather than the current level of £130.73, or £655.83 monthly rather than £566.51.

9. The rate used to set the amount to be deducted from earnings subject to maintenance arrestment and conjoined arrestment orders will increase from £18.63 to £21.56. This aligns with the lower daily threshold for earnings arrestments.

Consultation

10. 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 Accountant in Bankruptcy has published advance notice of the proposal to increase the thresholds by inflation on its website and circulated to stakeholders 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. Most earnings arrestments are made in response to council tax debt, so informal consultation has also been undertaken with CoSLA and the Institute of Revenues Rating and Valuation (IRRV). Informal consultation has also been undertaken with the Scottish Courts and Tribunal Service (SCTS) who utilise the tables for fine enforcement where a criminal fine has an earnings arrestment attached to it.

Impact Assessments

11. 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.

12. 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 apply to all irrespective of particular protected characteristics and are introduced to protect those struggling with debt and subject to an earnings arrestment by increasing the threshold where deductions can be taken from their earnings.

13. 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. To protect the lowest earners, a minimum deduction remains in place for weekly, monthly and daily earnings.

Financial Effects

14. 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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