

POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2018

S.S.I. 2018/345

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”) and all other powers enabling them to do so. It is subject to negative resolution procedure.

Policy Objectives

2. This instrument amends sections 53(2)(b) and 63(4)(b) of, and Schedule 2 to the 1987 Act and replaces the Diligence against Earnings (Variation) (Scotland) Regulations 2015 (S.S.I. 2015/370) (“the 2015 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). Up-rating 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 2015.

5. The tables contained in the 2015 Regulations are calculated based on the inflation figures published in the Consumer Price Inflation, June 2015 report by the Office for National Statistics.

6. 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 measured by the median gross weekly earnings published in the Annual Survey of Hours and Earnings 2017 report by the Office for National Statistics. As pre 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.

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 £122.28 weekly rather than the current level of £113.68, or £529.90 monthly rather than £494.01.

9. The rate used when calculating the deductions to be made under conjoined arrestment orders and current maintenance arrestments will increase to £17.42, to align it 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 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 the lower threshold to £529.90.

Consultation

11. The amendments made by this instrument are intended to make minor uprating changes to sections 53 and 63 of and Schedule 2 to the 1987 Act. No formal public consultation has been carried out but these Regulations have been published on the Accountant in Bankruptcy (AiB) 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.

Financial Effects

12. 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
November 2018