

EXECUTIVE NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (NO. 2) (SCOTLAND) REGULATIONS 2009 SSI/2009/395

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), and Schedule 2 of the 1987 Act and replaces S.S.I. 2006/116 (although that instrument is retained for transitional purposes).

3. This instrument will increase debtor protection by raising the threshold beneath which deductions may not be taken from earnings by arrestment.

4. The deduction tables which form part of Schedule 2 have been amended, to provide a process which is both straightforward for employers to operate and fairer for debtors who are subject to diligence against their earnings. Debtors will see a gradual increase in deductions as their earnings grow and a decrease in deductions if their earnings fall, as opposed to the steps operated in the old deductions table, which saw debtors at opposite ends of a wide earnings band paying the same amount.

5. Subsequent alterations to the tables can be easily applied, by taking into account the increases to median annual earnings contained in the Office for National Statistics’ Annual Survey of Hours and Earnings. The minimum threshold under which there may be no deduction can be raised or lowered according to changes in the economy. Alternatively, the rate of deduction may be increased or decreased by changing the percentage bands within the tables.

6. A mechanism is provided to calculate deductions on a weekly, monthly and daily basis. A minimum deduction remains in place for weekly, monthly and daily earnings.

7. The rate to be used when calculating the deductions to be made under conjoined arrestment orders and current maintenance arrestments will increase to £13.64, to align it with the lower daily threshold for earnings arrestments.

Consultation

8. The amendments made by this instrument are intended to make minor changes to sections 53 and 63 of and Schedule 2 to the 1987 Act. No formal public consultation has been carried out, although advice has been taken from a statistician from the Scottish Government's Analytical Services Division and comments from stakeholders including the British Computer Society's Payroll Group have been considered when drafting the instrument. The Regulations have also been shared with representatives from HMRC, Clearing Banks, Local Authorities and the Advice Sector.

Financial Effects

9. A regulatory impact assessment has not been prepared in this instance. 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 regular yearly updates to payroll systems.

Accountant in Bankruptcy
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