



# Debtors (Scotland) Act 1987

## 1987 CHAPTER 18

### PART III **S**

#### DILIGENCE AGAINST EARNINGS

##### *Earnings arrestments*

#### 47 **General effect of earnings arrestment. **S****

- (1) Subject to section 69 of this Act, an earnings arrestment shall have the effect of requiring the employer of a debtor, while the arrestment is in effect, to deduct a sum calculated in accordance with section 49 of this Act from the debtor's net earnings on every pay-day and, as soon as is reasonably practicable, to pay any sum so deducted to the creditor.
- (2) Subject to sections 59 (priority among arrestments), 62 (relationship of conjoined arrestment order with certain other arrestments) and 90 (provisions relating to charges for payment) of this Act, an earnings arrestment—
  - (a) shall come into effect on the date of its execution, being the date on which a schedule in the form prescribed by Act of Sederunt (to be known as an "earnings arrestment schedule") is served on the employer; and
  - (b) shall remain in effect until the debt recoverable has been paid or otherwise extinguished, the debtor has ceased to be employed by the employer, or the arrestment has been recalled or abandoned by the creditor or has for any other reason ceased to have effect.

#### 48 **Debt recoverable by earnings arrestment. **S****

- (1) Subject to subsections (2) and (3) below, the debt recoverable by an earnings arrestment shall consist of the following sums, in so far as outstanding—
  - (a) any ordinary debt and any expenses due under the decree or other document on which the earnings arrestment proceeds;

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- (b) any interest on those sums which has accrued at the date of execution of the earnings arrestment; and
  - (c) the expenses incurred in executing the earnings arrestment and the charge which preceded it.
- (2) In relation to arrears of maintenance, the ordinary debt referred to in subsection (1)(a) above shall be the amount of those arrears less any sum which the debtor is entitled to deduct from that amount under any enactment in respect of income tax.
- (3) Any sum mentioned in subsection (1) above shall be included in the debt recoverable only if, and to the extent that, it is specified in the earnings arrestment schedule.
- (4) It shall be competent for a creditor to enforce payment of more than one debt payable to him by the same debtor by means of a single earnings arrestment, whether the arrestment is executed in pursuance of the same warrant or of 2 or more different warrants authorising diligence.

#### 49 **Deductions from net earnings to be made by employer.** S

- (1) The sum to be deducted under section 47 of this Act on any pay-day shall be—
- (a) where the debtor's earnings are payable weekly, the sum specified in column 2 of Table A in Schedule 2 to this Act opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
  - (b) where his earnings are payable monthly, the sum specified in column 2 of Table B in that Schedule opposite the band in column 1 of that Table within which his net earnings payable on that pay-day fall;
  - (c) where his earnings are payable at regular intervals of a whole number of weeks or months, the sum arrived at by—
    - (i) calculating what would be his weekly or monthly net earnings by dividing the net earnings payable to him on the pay-day by that whole number (of weeks or months, as the case may be);
    - (ii) ascertaining the sum specified in column 2 of Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under subparagraph (i) above fall; and
    - (iii) multiplying that sum by the whole number (of weeks or months, as the case may be).
- (2) Where the debtor's earnings are payable at regular intervals other than at intervals to which subsection (1) above applies, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—
- (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day by the number of days in the interval;
  - (b) ascertaining the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
  - (c) multiplying that sum by the number of days in the interval.
- (3) Where the debtor's earnings are payable at irregular intervals, the sum to be deducted on any pay-day under section 47 of this Act shall be arrived at by—

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- (a) calculating what would be his daily net earnings by dividing the net earnings payable to him on the pay-day—
    - (i) by the number of days since earnings were last paid to him; or
    - (ii) if the earnings are the first earnings to be paid to him by the employer, by the number of days since he commenced his employment with the employer;
  - (b) taking the sum specified in column 2 of Table C in Schedule 2 to this Act opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (a) above fall; and
  - (c) multiplying that sum by the number of days mentioned in paragraph (a) above.
- (4) Where on the same pay-day there are paid to the debtor both earnings payable at regular intervals and earnings which are not payable at regular intervals, for the purpose of arriving at the sum to be deducted on that pay-day under section 47 of this Act, all those earnings shall be aggregated and treated as earnings payable at the regular interval.
- (5) Where earnings payable to a debtor at regular intervals are paid to him on one pay-day and earnings which are not payable at regular intervals are paid to him on a different pay-day, the sum to be deducted on each of those pay-days under section 47 of this Act in respect of those earnings which are not paid at regular intervals shall be 20 per cent. of the net earnings paid to him on that pay-day.
- (6) Where earnings are paid to a debtor by 2 or more series of payments at regular intervals—
  - (a) if the intervals are of different lengths—
    - (i) for the purpose of arriving at the sum to be deducted under section 47 of this Act, whichever of subsections (1) and (2) above is appropriate shall apply to the series with the shortest interval; and
    - (ii) in relation to the earnings paid in any other series, the said sum shall be 20 per cent. of the net earnings;
  - (b) if the intervals are of the same length and payments in more than one series are payable on the same day—
    - (i) the payments in those series shall be aggregated and whichever of subsections (1) and (2) above is appropriate shall apply to the aggregate; and
    - (ii) paragraph (a)(ii) above shall apply to every other series;
  - (c) if the intervals are of the same length and no 2 payments are payable on the same day paragraph (a)(i) above shall apply to such series as the employer may choose, and paragraph (a)(ii) above shall apply to every other series.
- (7) The Lord Advocate may, by regulations, vary—
  - (a) Tables A, B and C of Schedule 2 to this Act;
  - (b) the percentage specified in subsections (5) and (6)(a)(ii) above,and such regulations may make different provision for different cases.
- (8) Subject to section 69(1) and (2) of this Act, regulations under subsection (7) above shall not apply in relation to an existing earnings arremts unless and until the creditor or the debtor intimates the making of the regulations to the employer in the form prescribed by Act of Sederunt.

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## 50 Review of earnings arrestment. **S**

- (1) If the sheriff is satisfied that an earnings arrestment is invalid or has ceased to have effect he shall, on an application by the debtor or the person on whom the earnings arrestment schedule was served, make an order declaring that to be the case, and may make such consequential order as appears to him to be necessary in the circumstances; and the sheriff clerk shall intimate any order under this subsection to the debtor, the creditor and the person on whom the earnings arrestment schedule was served.
- (2) An order under subsection (1) above declaring that an arrestment is invalid or has ceased to have effect shall not be subject to appeal.
- (3) The sheriff, on an application by the debtor, the creditor or the employer, may make an order determining any dispute as to the operation of an earnings arrestment.
- (4) Without prejudice to section 57(5) of this Act, the sheriff, when making an order under subsection (3) above, may order—
  - (a) the reimbursement of any payment made in the operation of the arrestment which ought not to have been made; or
  - (b) the payment of any sum which ought to have been paid in the operation of the arrestment but which has not been paid.
- (5) An order under subsection (4) above shall require the person against whom it is made to pay interest on the sum to be paid by him under the order at the specified rate from such date as the sheriff shall specify in the order.

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