AdviceTalks

[redacted]

28th December 2022

Claire Baker
Convenor
Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Claire

Re: Proposed Diligence Against Earnings (Variations) Regulations

I am writing to raise my concerns in relation to proposals contained in a letter sent to the Committee on the 21st of December 2022, by the Minister of Public Finance, Planning and Community Wealth, Mr Tom Arthur MSP.

These relate to proposal to lay new Diligence against Earnings (Variation) Regulations. These regulations relate to increasing the Protected Minimum Amount (PMA) in Earning Arrestments.

Mr Arthur has proposed increasing the PMA in Earning arrestments from £566.51 to £655.83. This means this will be the amount people will be able to receive through their net wages before the first taper of 19% is applied to calculate how much that person's employer must deduct from their wages to pay to their creditors.

So, for example, if someone is currently in receipt of net wages of £1,000, at present £82.36 can be deducted ((£1,000-£566.51) x19%). If the PMA is increased to £655.83, this amount will reduce to £65.39 ((£1,000-£655.83) x 19%). A difference of £16.97.

The methodology that is used to calculate what the increase in the PMA in an Earning Arrestment should be is normally to take the average last 3 years CPI rate of interest and increase the PMA by that amount or, if higher, increase by the average rate that earnings have been inflated by over the same period. This is normally done every 3 years and was last done in April 2022.

I am grateful that the Minister has decided to depart from this practice, due to the cost-of-living crisis and bring forward further uprating in April 2023. I, however, don't believe what is being proposed is adequate.

There is an obvious flaw in the above methodology in setting the PMA for earning arrestments that has seen this type of diligence over the last 14 years becoming harsher, which hurts most those on lower incomes.

Take the example of someone earning £1,000 net each month (after deductions for Income Tax, National Insurance and pension contributions have been taken). If you increase the PMA of £566.51 by 15.77%, then the new PMA will be £655.83. However, as can be seen from the above example, this only results in the amount being taken from someone's wages falling by £16.97, even though if their expenditure was £1,000, they may have seen their expenditure increase by £157 per month (15.77% of £1,000).

Clearly if such a methodology continues over time without any corrections being made out with the normal methodology, then over time earning arrestments will become harsher and those on lower incomes will become poorer, possibly struggling to pay other essential bills, and getting caught in a low-income debt trap.

It would appear sensible if the methodology cannot be changed, there must periodically be a manual correction made by applying a flat rate increase, like the way such increases are used periodically in relation to public sector wages increases, to avoid a growing differential between the lowest and highest paid employees, which can occur over time when wage rises are based on a flat rate percentage increase.

I would argue such a flat rate increase to the Protected Minimum Amount in Earning Arrestments is now justified, as I am not aware of any such increase since 2008, when the PMA was introduced. So logically over the last 14 years Earning Arrestments have become harsher.

I believe the correct amount for this increase should be £433.49 to increase the amount to £1,000. This would bring the PMA into line with the Protected Minimum Balance in Bank Account arrestments, which was increased from £566.51 to £1,000 on the 1st November 2022 and brough that amount into line with the minimum amount someone is allowed to keep in a bankruptcy without the funds vesting with the Trustee in Bankruptcy.

Such a position, I understand was supported by myself, Citizen Advice Scotland, Money Advice Scotland, Stepchange and Christians against Poverty who also gave evidence earlier this year to the Social Justice and Social Security Committee enquiry into low income and debt.

I also believe this would be a sensible approach, bearing in mind we can expect energy prices to increase again in April 2023, we appear to be in a cycle of rising interest rates and inflation is still running at over 10%.

I hope you will agree with me and convey this view in your reply to the Minister, but should he lay the regulations using the PMA figure he has proposed to you in his letter, I would respectfully request that you hear evidence on this matter from a wider group of stakeholders.

It may not be possible to amend regulations, but I feel it would be appropriate in relation to this matter, considering the cost-of-living crisis, that the Minister should be asked why he does not feel a flat rate increase would be appropriate at this time.

Yours sincerely

Alan McIntosh
Managing Director