

Economy and Fair Work Committee

13th Meeting, 2021 (Session 6), Wednesday 1 December 2021

Subordinate Legislation

Overview of instrument

1. The Committee has been designated as lead for consideration of the following negative instrument:

[The Diligence against Earnings \(Variation\) \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

2. The instrument and policy note are attached.

Purpose of the Regulations

3. The purpose of the instrument is to update the figures contained in Part 3 of the [Debtors \(Scotland\) Act 1987](#) which cover earnings arrestment.
4. In order to obtain an earnings arrestment, a creditor must take a debtor to court. If the court is satisfied that the money is owed, it will issue a court order. If the debtor fails to pay, there are a number of debt enforcement options. These are only available to people who've taken court action.
5. A diligence of earnings arrestment can enforce payment of a sum due to a creditor by making a deduction from earnings. The employer makes a deduction each pay day from the person's wages or salary.
6. These regulations update how much money an individual is allowed to keep before any payment can be taken from their wages and the scale of what can be taken above that level. The Scottish Government has reviewed and updated these figures every three years since 2006. They were last updated in 2018.
7. These regulations increase the current protected minimum balance from £529.90 to £566.51. The Scottish Government advise that, as average earnings continue to rise at a higher rate than inflation, the Diligence against Earnings (Variation) (Scotland) Regulations 2021 are based on average earnings increases rather than inflation.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee (DPLRC) considered this instrument at its meeting on 23 November, [no points were raised](#).

For Decision

9. The Committee is invited to note the instrument.

**Clerk to the Committee
25 November 2021**

SCOTTISH STATUTORY INSTRUMENTS

2021 No. 409

ENFORCEMENT

**The Diligence against Earnings (Variation) (Scotland)
Regulations 2021**

<i>Made</i>	- - - -	<i>10th November 2021</i>
<i>Laid before the Scottish Parliament</i>		<i>12th November 2021</i>
<i>Coming into force</i>	- -	<i>6th April 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(7)(a), 53(3) and 63(6) of the Debtors (Scotland) Act 1987(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Diligence against Earnings (Variation) (Scotland) Regulations 2021 and come into force on 6 April 2022.

Rate of deductions in diligence against earnings

2. In the Debtors (Scotland) Act 1987—

- (a) in sections 53(2)(b) (deductions to be made under current maintenance arrestments) and 63(4)(b) (deductions to be made under conjoined arrestment orders), for “17.42”(b) substitute “18.63”, and
- (b) for Tables A, B and C of schedule 2(c) (deductions to be made under earnings arrestment), substitute respectively Tables A, B and C in the schedule of these Regulations.

IVAN MCKEE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th November 2021

(a) 1987 c. 18. The functions of the Lord Advocate were transferred to the Secretary of State by S.I. 1999/678 and to the Scottish Ministers by section 53 of the Scotland Act 1998 (c. 46).
(b) This sum was most recently substituted by S.S.I. 2018/345.
(c) Tables A, B and C were most recently substituted by S.S.I. 2018/345.

SCHEDULE

Regulation 2(b)

TABLE A: DEDUCTIONS FROM WEEKLY EARNINGS

<i>Net earnings</i>	<i>Deduction*</i>
Not exceeding £130.73	Nil
Exceeding £130.73 but not exceeding £472.54	£4.00 or 19% of earnings exceeding £130.73, whichever is the greater
Exceeding £472.54 but not exceeding £710.42	£64.94 plus 23% of earnings exceeding £472.54
Exceeding £710.42	£119.66 plus 50% of earnings exceeding £710.42

TABLE B: DEDUCTIONS FROM MONTHLY EARNINGS

<i>Net earnings</i>	<i>Deduction*</i>
Not exceeding £566.51	Nil
Exceeding £566.51 but not exceeding £2,047.65	£15.00 or 19% of earnings exceeding £566.51, whichever is the greater
Exceeding £2,047.65 but not exceeding £3,078.47	£281.42 plus 23% of earnings exceeding £2,047.65
Exceeding £3,078.47	£518.51 plus 50% of earnings exceeding £3,078.47

TABLE C: DEDUCTIONS FROM DAILY EARNINGS

<i>Net earnings</i>	<i>Deduction*</i>
Not exceeding £18.63	Nil
Exceeding £18.63 but not exceeding £67.32	£0.50 or 19% of earnings exceeding £18.63, whichever is the greater
Exceeding £67.32 but not exceeding £101.21	£9.25 plus 23% of earnings exceeding £67.32
Exceeding £101.21	£17.05 plus 50% of earnings exceeding £101.21

*When applying a percentage the calculation should be done to two decimal places of a penny and the result rounded to the nearest whole penny, with an exact half penny being rounded down.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes to certain figures relating to diligence against earnings in Part 3 of the Debtors (Scotland) Act 1987 (“the Act”).

Regulation 2(a) increases the figure in sections 53(2)(b) and 63(4)(b) of the Act, used to determine the sum to be deducted from earnings subject to current maintenance arrestment or conjoined arrestment order, from £17.42 to £18.63.

Regulation 2(b) substitutes new Tables A, B and C for those in schedule 2 of the Act which describe the deductions to be made from earnings subject to an earnings arrestment.

The increases have been calculated by reference to the change in earnings since the figures were last updated in 2018.

In accordance with sections 49(8), 53(4) and (5), 63(7) and (8) and 69(1) and (2) of the Act, these Regulations do not apply to existing diligences until the Regulations are intimated to employers, unless employers choose to apply them. If they do not choose to do so the figures substituted by previous regulations will continue to apply until intimation takes place.

The increase to the lower monthly threshold will also raise the minimum balance in debtors’ bank accounts protected from arrestment by section 73F of the Act, introduced by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), from £529.90 to £566.51.

A Business and Regulatory Impact Assessment has been prepared and is available online at www.legislation.gov.uk.

POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2021

S.S.I. 2021/409

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.

<p>Purpose of the instrument. This instrument 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.</p>

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 2018 (S.S.I. 2018/345) (“the 2018 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). Uprating 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 2018.

5. The tables contained in the 2018 Regulations were calculated based on average earnings.

6. For this set of Regulations, we propose to again increase the figures in the tables based on the increase in average earnings, based on the Office for National Statistics Annual Survey of Hours and Earnings 2020. Average earnings continue to rise at a higher rate than inflation and increasing the tables based on the increase in average earnings will offer greater protection for those with debt.

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 £130.73 weekly rather than the current level of £122.28, or £566.51 monthly rather than £529.90.

9. The rate used to set the amount to be deducted from earnings subject to maintenance arrestment and conjoined arrestment orders will increase from £17.42 to £18.63. This aligns 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, which inserted new section 73F to the 1987 Act, 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 that lower threshold to £566.51.

Consultation

11. 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 these Regulations have been published on the Accountant in Bankruptcy 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.

Impact Assessments

12. 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](http://legislation.gov.uk).

13. 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 introduced are to protect those struggling with debt and subject to an earnings arrestment, increasing the threshold where deductions can be taken from their earnings. It also offers further protections to those subject to a bank arrestment, increasing the amount that must be left in their bank account when arrested. The changes apply to all irrespective of their age, race, gender, disability or sexual orientation.

14. 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 and increasing the amount that must be left in a bank account when arrested. To protect the lowest earners, a minimum deduction remains in place for weekly, monthly and daily earnings.

Financial Effects

15. 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 2021

Final Business and Regulatory Impact Assessment

Title of Proposal

The Diligence against Earnings (Variation) (Scotland) Regulations 2021

Purpose and intended effect

Objective

To update 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.

Background

The diligence against earnings arrestment is designed to enforce payment of a sum due to a creditor by making a deduction from the earnings of the person who has debt. The employer makes a deduction each pay day from the person's wages or salary and pays that amount to the creditor. Schedule 2 of the Debtors (Scotland) Act 1987 ("the 1987 Act") provides the statutory tables used to calculate the amount an employer must deduct when a person is subject to diligence against earnings. The Scottish Government has reviewed and updated the deduction tables every three years since 2006. The tables were last updated in 2018.

The lower monthly threshold for earnings arrestment also determines the Protected Minimum Balance ("PMB") in a bank 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 protects those who owe money by setting out a minimum amount of funds which are protected from the arrestment. This means that not all funds in a bank account can be arrested, with a person currently being left with a minimum of £529.90 in their account. We propose to increase this protection from £529.90 to £566.51.

In 2018, we increased the figures in part 3 of the 1987 Act to account for increases in average earnings as these offered the greatest protection for those with debt because the change in average earnings over the review period was greater than the change in inflation. In considering the figures this year, we again propose to update these using the average earnings, as average earnings continue to rise at a higher rate than inflation and increasing the tables based on the increase in average earnings will offer greater protection for those with debt.

Therefore, to ensure that those subject to earnings arrestment do not face additional hardship, the Diligence against Earnings (Variation) (Scotland) Regulations 2021 are based on average earnings increases rather than inflation.

This means that someone subject to an earnings arrestment would have deductions taken if they earn more than £130.73 weekly rather than the current level of £122.28, or £566.51 monthly rather than £529.90.

Rationale for Government intervention

To ensure the legislation continues to strike the right balance and fairness between those who are owed money and those who have debt.

These regulations contribute to the Scottish Government Purpose; to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. These are aligned by the delivery of the following national outcomes:

- **We have thriving and innovative businesses, with quality jobs and fair work for everyone.**
- **We tackle poverty by sharing opportunities, wealth and power more equally.**
- **We have a globally competitive, entrepreneurial inclusive and sustainable economy.**

Consultation

Within Government

We consulted statisticians from the Scottish Government’s Statistician Group to review the Arrested Earnings deduction tables. Following this review, it was concluded that the deduction tables be updated to account for changes in average earnings.

Public Consultation

No public consultation was undertaken in relation to the Diligence against Earnings (Variation) (Scotland) Regulations 2021 as these relate to the Debtors (Scotland) Act 1987 which has already passed through the Scottish Parliament and received Royal Assent. These regulations have been reviewed every 3 years since 2006.

Business

We held no face-to-face discussions with businesses. We published the draft regulations on the AiB website and circulated to stakeholders so that they could provide feedback on the impact of the changes. This SSI is not expected to be controversial.

Proposed tables under Diligence Against Earnings (Variation) (Scotland) Regulations 2021

TABLE A: DEDUCTIONS FROM WEEKLY EARNINGS	
<i>Net earnings</i>	<i>Deduction*</i>
Not exceeding £130.73	Nil
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Exceeding £2,047.65 but not exceeding £3,078.47	£281.42 plus 23% of earnings exceeding £2,047.65
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Exceeding £67.32 but not exceeding £101.21	£9.25 plus 23% of earnings exceeding £67.32
Exceeding £101.21	£17.05 plus 50% of earnings exceeding £101.21

*When applying a percentage the calculation should be done to two decimal places of a penny and the result rounded to the nearest whole penny, with an exact half penny being rounded down.

It is important to ensure that any proposed changes continue to strike the right balance between creditors and debtors. By introducing the proposed changes this will allow debtors to retain more money, giving them more spending power, enabling them to contribute towards a stronger economy.

Options

Option 1 - No change

To adopt the no change option and continue with the current deductions would not require a change in legislation, and the status quo would be maintained for those subject to arrestment and those involved in administering arrestment.

Sectors and groups affected

The no change option would mean that a person subject to an arrestment would not be subject to any increase or decrease in deductions, although the rise in inflation means they effectively have less spending power.

Benefits

Retaining the status quo would mean that the current deduction tables continue to apply and employers would not have to update their automated payroll systems to accommodate any changes.

There would be no need for a person subject to an arrestment to make budgetary adjustments as there will be no change in deductions from earnings. This is also true for those subject to arrestment of funds in their bank account as they would receive the same amount of protection as they do at present and those subject to deductions from their earnings for child support payments would continue to have the same protected daily rate applied.

Where there is a conjoined arrestment order in place (where 2 or more debts are being repaid through an earnings arrestment at the same time) the Scottish Court Service ingathers the funds from the employer, calculates the sum due to each creditor and distributes the funds to the creditors. Therefore, no change in the rates would mean there is no need for the Scottish Court Service to issue revised tables or instructions to sheriff clerks.

Costs

While the deduction tables would not be subject to change at this point in time, to adopt this option may result in greater, and more noticeable, increase in deductions from earnings in the future.

Option 2 – Update tables using the change to average earnings

This option replicates the methodology applied in 2018. In conducting this review for the Diligence against Earnings (Variation) (Scotland) Regulations 2021 we identified that the change in average earnings has surpassed inflation over the review period. Using the change in average earnings to update the deduction tables provides further protection to those who have debt compared with uprating by inflation or keeping the deduction tables unchanged. In recognition of this it is proposed that the deduction tables be updated to account for changes in average earnings.

Sectors and groups affected

The proposed changes to the figures in part 3 of the Debtors (Scotland) Act 1987 will impact on the following sectors and groups: people who have debt, those who are owed money, payroll software developers, employers, banks and Sheriff Court clerks.

Benefits

By adopting this model, all people subject to an earnings arrestment will see a small decrease in the percentage of income arrested compared to 3 years ago. For a small number of people on very low incomes, deductions from earnings will cease.

There would be increased protection to those who are subject to arrestment of funds in their bank account. The Protected Minimum Balance in arrestment would increase from £529.90 to £566.51, preserving this sum for the person in debt.

Where there is a conjoined arrestment order in place, the Scottish Court Service ingathers the funds from the employer, calculates the sum due to each creditor and distributes the funds to the creditors. Therefore a change in the deduction tables will require Scottish Court clerks to recalculate funds ingathered. The sum to be deducted from earnings subject to a current maintenance arrestment or conjoined arrestment order will increase from £17.42 to £18.63.

Costs

There is no cost to the Scottish Government to implement this option, however, it is recognised that there is potentially a small cost to employers. Introducing these changes from April 2021, to coincide with annual payroll system updates, would minimise these costs.

Any changes to the tables will affect employers who will need to instruct their software developers to programme the details of the new model as part of their annual software update. These software changes will be absorbed into normal updates made by employers to payroll systems to accommodate the new tax year. To ensure we assist the developers we need to have the Regulations through the Parliamentary process by mid December 2021 to allow them to incorporate the changes. Should the Regulations complete the Parliamentary process later than this, software providers will need to make an additional update to payroll packages after they are rolled out to employers, which will create additional costs for employers. Software providers have previously been supportive of the changes we made to the format of the tables, as amendments to systems are straightforward. We understand that providers need only change around 12 lines of data in their programming.

Scottish Firms Impact Test

As previously mentioned, we held no face to face discussions with businesses. Prior to the Diligence against Earnings (Variation) (Scotland) Regulations 2021 being laid in the Scottish Parliament we circulated the proposed changes to stakeholder groups representing those who may be affected by these regulations.

Competition Assessment

Having considered the Competition and Markets Authority (CMA) competition assessment questions I can confirm that these changes will apply equally to all who engage with the regulations. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the regulations.

- Will the proposal directly limit the number or range of suppliers? No
- Will the proposal indirectly limit the number or range of suppliers? No
- Will the proposal limit the ability of suppliers to compete? No
- Will the proposal reduce suppliers' incentives to compete vigorously? No

Test run of business forms

No new business forms have been introduced.

Legal Aid Impact Test

The Scottish Legal Aid Board (SLAB) anticipates that the uprating of the statutory deduction from earnings tables, in their own right, will not impact on the legal aid fund.

Enforcement, sanctions and monitoring

The Accountant in Bankruptcy, an agency of the Scottish Government, has responsibility for the legislation relating to earnings arrestment. On receipt of an earnings arrestment schedule the debtor’s employer must enforce the terms of the earnings arrestment. Section 57 of the Debtors (Scotland) Act 1987 details the action to be taken where an employer fails to comply with the regulations.

Sheriff Officers, in accordance with section 84 of the Debtors (Scotland) Act 1987, will submit to the Scottish Government, on a quarterly basis, statistical data on the use of the diligence of arrestment. This will allow the Scottish Government to monitor the use of this diligence and identify any trends that may require further investigation.

Implementation and delivery plan

If approved by Parliament, the Diligence against Earnings (Variation) (Scotland) Regulations 2021 will be brought into force on the 6 April 2022. The Accountant in Bankruptcy will publish the introduction of the regulations on their website. The new statutory tables will also be incorporated in the legislation published on the legislation.gov.uk website.

Post-implementation Review

To evaluate the impact of the new legislation the Scottish Government gave an undertaking to review the diligence against earnings tables every 3 years. Therefore, the next review will be undertaken in 2024.

In addition to the above, the Scottish Government, will analyse, on a yearly basis, the statistical data supplied by Sheriff Officers on diligence against earnings, to identify any trends that may require further investigation. The Scottish Government will review the findings of this investigation and consider whether any changes are necessary to the regulations or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary Committees where necessary.

Summary and recommendation

The recommended option is option 2. By updating the tables in this way it is possible to make some allowance for the effect of inflation on everyone.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	For those who interact with this legislation there would be no change.	No financial costs would be incurred. To make no change at this time, may result in a greater

		increase in deductions from earnings in the future.
2	<p>This option replicates the methodology applied in 2018. In conducting this review for Diligence against Earnings (Variation) (Scotland) Regulations 2021 we identified that the change in average earnings has surpassed inflation over the review period. Using the change in average earnings to update the deduction tables provides further protection to those who have debt compared with uprating by inflation or keeping the deduction tables unchanged. Those subject to an earnings arrestment will see a small decrease in earnings arrested compared with three years ago for a given earnings level.</p>	<p>There is no financial cost to the Scottish Government and potentially a small financial cost to employers. It is anticipated that the changes can be incorporated in the annual payroll systems update, thereby minimising costs.</p>

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Ivan McKee

Date: 10th November 2021

Minister's name Ivan McKee MSP

Minister's title Minister for Business, Trade, Tourism and Enterprise

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