Economy and Fair Work Committee
Wednesday 27 November 2024
31st Meeting, 2024 (Session 6)

Note by the Clerk on Diligence against Earnings (Variation) (Scotland) Regulations 2024 (SSI 2024/293)

Overview

1. At this meeting, the Committee will further consider the Diligence against Earnings (Variation) (Scotland) Regulations 2024 (SSI 2024/293). This instrument is subject to the negative procedure.

2. The Committee will hear from Ivan McKee, Minister for Public Finance, Scottish Government.

3. Information about the instrument is summarised below:

   Title of instrument: Diligence against Earnings (Variation) (Scotland) Regulations 2024 (2024/293)

   Laid under: Debtors (Scotland) Act 1987

   Laid on: 31 October 2024

   Procedure: Negative

   Deadline for committee consideration: 2 December 2024

   Deadline for Chamber consideration: 9 December 2024

   Coming into force: 6 April 2025

Procedure

4. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid. Unless it is annulled, it comes into force.

5. Once laid, the instrument is referred to:

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on technical grounds, and

   - a lead committee for scrutiny on policy grounds.

6. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the deadline set out above).

7. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered this instrument on 12 November 2024 and reported in its 65th Report, 2024. The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

9. This instrument amends the figures contained in Part 3 of the Debtors (Scotland) Act 1987 ("the 1987 Act"). 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.

10. The figures were last updated in 2023, earlier than the usual three year uprate, to reflect the cost crisis and high inflation rates at the time.

11. During scrutiny of the Bankruptcy and Diligence (Scotland) Act 2024, in its Stage 1 Report, this this Committee urged the Scottish Government to increase the amount protected from creditors in earnings arrestment and other forms of diligence. The Committee said increasing the protected minimum amount to £1,000, in line with that which applies to bank arrestments, would appear to be reasonable.

12. The Scottish Government committed to consult on the protected minimum amount and the bandings, and to update the diligence against earnings statutory tables in April 2025. The regulations before the Committee now make minor adjustments to the table bandings and increase the current protected minimum amount to £750.00 a month.

13. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

14. The Committee considered the instrument at its last meeting and agreed to invite the Minister to attend the next meeting. No motion to annul has been lodged.

15. Members are invited to consider the instrument, raise any issues with the Minister and (in the absence of any motion to annul) note the instrument but in doing so make any observations.

Clerks to the Committee
November 2024

Annexe A

POLICY NOTE

THE DILIGENCE AGAINST EARNINGS (VARIATION) (SCOTLAND) REGULATIONS 2024

SSI 2024/293

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"). The instrument is subject to negative procedure.

Summary

Purpose of the instrument: To amend 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.

Policy Objectives

This instrument amends sections 53(2)(b), 63(4)(b) and Schedule 2 of the 1987 Act and replaces the Diligence against Earnings (Variation) (Scotland) Regulations 2023 (S.S.I. 2023/27) ("the 2023 Regulations"), although that instrument is retained for transitional purposes.

This instrument will increase protection for those in debt by raising the threshold beneath which deductions may not be taken from earnings by arrestment.

Schedule 2 of the 1987 Act, as updated by successive Regulations, sets out in tables, the deductions made by employers when a person is subject to diligence against earnings (earnings arrestment). These tables are based on weekly, monthly or daily earnings. It is usual practice to uprate these tables every three years, to maintain the right balance between debtor protection and effective enforcement action for creditors.

The deduction tables were last updated in 2023 (earlier than the usual three year uprate) to reflect the cost crisis and the high inflation rates at the time. The figures contained in the 2023 Regulations were calculated based on the increase in consumer price inflation for the period between October 2020 and October 2022. At that point, inflation was rising at a higher rate than average earnings and increasing the tables based on the increase in inflation offered greater protection for those subject to diligence against earnings.

During scrutiny of the Bankruptcy and Diligence (Scotland) Act 2024, stakeholders and some members of the Scottish Parliament called for an increase in the protected minimum amount to £1,000 per month, and reform to the bandings used to calculate earnings arrestment deductions. However, representatives of local authorities raised concerns about potential unintended impacts from this level of increase. In response, the Scottish Government committed to consult on the protected minimum amount and the bandings and to update the diligence against earnings statutory tables in April 2025. These Regulations are being laid to meet the commitment to update the tables in this timescale but will also take a step towards reform by making minor amendments to the earnings arrestment bandings which will increase protection further for the lowest earners. The other matters raised by stakeholders will be considered in a public consultation.

The current protected minimum amount figure, based on monthly earnings, is £655.83. Calculations show that an increase based on consumer price inflation would raise this figure to £729.28. To increase protection, this figure has been rounded up based on average weekly earnings, meaning someone subject to an earnings arrestment will have deductions taken if they earn more than £750 a month. The weekly threshold will increase from £150.94 to £172.61, and the daily threshold will increase from £21.56 to £24.66.

The rate used to determine the amount to be deducted from earnings subject to a current maintenance arrestment or conjoined arrestment order, where all the debts are current maintenance, will increase from £21.56 to £24.66. This aligns with the lower daily threshold for an earnings arrestment.

In addition, these Regulations made some minor adjustments to the table bandings that determine how much a person will have deducted from their earnings if they earn above the protected minimum amount. For example, the lowest banding will reduce from 19% to 15% for those earning up to £1,500 a month. An additional banding has also been added for those earning up to £2,500 a month. This will be offset for the main creditors that use earnings arrestments, such as local authorities, by a higher percentage paid in other bands. The intention behind this change is to enable those earning less to pay less whilst those who earn more will pay more. These changes do not affect the amount of debt that is to be repaid. However, it may mean that the time over which the debt is repaid is increased.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Diligence against Earnings (Variation) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

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 the Accountant in Bankruptcy has circulated the proposal to stakeholders for feedback on the impact of the changes through the Statutory Debt Solutions Ministerial Working Group. Advice has been taken from a statistician from the Scottish Government's Statistician Group. Most earnings arrestments are made in response to council tax debt, so informal consultation has also been undertaken with CoSLA and the Institute of Revenues Rating and Valuation (IRRV). Informal consultation has also been undertaken with the Scottish Courts and Tribunal Service (SCTS) who utilise the tables for fine enforcement where a criminal fine has an earnings arrestment attached to it.

Impact Assessments

A Business and Regulatory Impact Assessment and Child Rights and Wellbeing Impact Assessment 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 https://www.legislation.gov.uk

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 apply to all irrespective of particular protected characteristics and are introduced to protect those struggling with debt and subject to an earnings arrestment by increasing the threshold where deductions can be taken from their earnings.

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.

No policy issues were identified during the course of the development of these Regulations, or from the stakeholder discussion, which would have an effect on an island community which was significantly different from the effect on other communities (including other island communities). It was therefore not considered necessary to conduct an Island Communities Impact Assessment.

Financial Effects

A Business and Regulatory Impact Assessment has been completed. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government.

There will be an impact on local authorities who are the main users of earnings arrestments to recover council tax arrears. The changes will mean that most individuals will pay back less each month and in a small number of cases, will not pay anything via an earnings arrestment until their earnings are above the protected minimum amount figures. This could mean that in some cases it will take longer for the debt to be paid back.

There could be a small cost to employers. However, these Regulations will take effect at the beginning of the financial year to coincide with annual payroll system updates which will minimise these costs.

Accountant in Bankruptcy
October 2024