



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 9

DILIGENCE AGAINST EARNINGS

200 Arrestment of earnings: deductions from holiday pay

- (1) In section 47(1) of the 1987 Act (general effect of earnings arrestment), after “section 49” insert “or 49A”.
- (2) In section 49(1) of that Act (method of calculating deduction from earnings), at the beginning insert “Subject to section 49A of this Act,”.
- (3) After section 49 of that Act, insert—

“49A Deductions where net earnings include holiday pay

- (1) This section applies where—
 - (a) the debtor’s earnings are paid at regular intervals; and
 - (b) on one pay-day (in this section, the “normal pay-day”) there are paid to the debtor both—
 - (i) earnings normally payable on that pay-day (in this section, “normal earnings”); and
 - (ii) earnings such as are mentioned in subsection (2) below (in this section, “holiday pay”).
- (2) Holiday pay is earnings which—
 - (a) are paid in respect of a period of annual leave or public holiday; and
 - (b) would, were they not paid in respect of such leave or holiday, have been paid on a pay-day other than the normal pay-day.
- (3) In arriving at the sum to be deducted under section 47 of this Act on the normal pay-day, subsections (4) to (8) below shall apply.

Status: This is the original version (as it was originally enacted).

- (4) Calculate in accordance with section 49 of this Act the sum, if any, which would be deducted from the normal earnings if the holiday pay had not been paid on the normal pay-day.
- (5) Where—
- (a) the debtor’s normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months; and
 - (b) all of the holiday pay relates to a whole number of weeks or months,
- the sum, if any, to be deducted from the holiday pay shall be the sum arrived at by applying sub-paragraphs (i) to (iii) of section 49(1)(c) of this Act to the holiday pay as if it were the net earnings mentioned in that sub-paragraph (i).
- (6) Where the debtor’s normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months but part of the holiday pay relates to a whole number of weeks or months and part does not, the sum, if any, to be deducted from the holiday pay shall be the sum arrived at by—
- (a) in relation to the part of the holiday pay which relates to a whole number of weeks or months, applying subsection (5) above to that part;
 - (b) in relation to the part of the holiday pay which does not relate to a whole number of weeks or months, applying paragraphs (a) to (c) of section 49(2) of this Act to that part of the holiday pay as if it were the net earnings mentioned in that paragraph (a); and
 - (c) aggregating the sums arrived at as mentioned in paragraphs (a) and (b) above.
- (7) Where—
- (a) the debtor’s normal earnings are payable weekly, monthly or at regular intervals of a whole number of weeks or months but none of the holiday relates to such a whole number of weeks or months; or
 - (b) the debtor’s normal earnings are payable at regular intervals other than at intervals to which paragraph (a) above applies,
- the sum, if any, to be deducted from the holiday pay shall be arrived at by applying paragraph (b) of subsection (6) above to the holiday pay.
- (8) Aggregate—
- (a) the deduction, if any, calculated under subsection (4) above; and
 - (b) the deduction, if any, calculated under subsection (5), (6) or, as the case may be, (7) above.”