

# **Direct Earnings Attachments:**

**An Employer's Guide**

## Introduction

Local Authorities are responsible for recovering money owed to them as a result of a Housing Benefit debt arising under the **Social Security Administration Act 1992**.

Where the Local Authority administering Housing Benefit has been unable to recover money owed to them by customers, not currently in receipt of benefit, that money may be recovered by deduction from the customer's earnings.

The **Welfare Reform Act 2012**, which became law in March 2012, allows the Local Authority to ask you, as an employer, to make deductions directly from a customer's earnings. We do this by asking you to operate a **Direct Earnings Attachment (DEA)**. We do not have to go through the civil courts to do this, unlike the Attachment of Earnings Order (AOE) process, for example.

Within the Welfare Reform Act, the legislation covering DEAs, part of the **Social Security (Overpayment and Recovery) Regulations 2013**, came into force on 8 April 2013 and the regulations are available on the internet here:

<http://www.legislation.gov.uk/ukxi/2013/384/contents/made>

A DEA has its own regulations which follow some of the workings of a Deduction from Earnings Order (DEO) and some workings of an Attachment of Earnings Order (AEO). A DEA does not replace any of these other orders and in some circumstances employers may receive requests to implement deductions for a DEO and a DEA for the same employee.

You may be familiar with a DEO if you have ever been ordered to make deductions from an employee's earnings or pension for the Child Maintenance Group (CMG) (previously known as the Child Maintenance and Enforcement Group (CMEC), or the Child Support Agency (CSA)), as a way of collecting child maintenance from a non-resident parent.

Courts can make orders that mean you must take money directly from your employee's earnings in a similar way to how we ask you to make deductions for a DEA. Your employee may have an Attachment of Earnings Order (England & Wales), Earnings Arrestment (Scotland) or a Deduction from Earnings Order (for Child Maintenance), for example. The DEA can be imposed without a court order, but if your employee has any other deduction orders against them there are rules that tell you which money you should take first.

If your employee has one or more of the following in place, these will take priority over a DEA:

### England & Wales

Deduction from Earnings Order (DEO) from CMG

Attachment of Earnings Order (AEO) for Maintenance or Fines

Council Tax Attachment of Earnings Order (CTAEO)

### Scotland

Deduction of Earnings Order (DEO) from CMG

Earnings Arrestment (EA)

## Student Loans

A student loan repayment also takes priority over a DEA. This applies to both England & Wales and Scotland.

Once these priority orders have been taken into account in your calculation a DEA will then take priority in relation to other orders or notices in date order (in Scotland this will be the date they were received). **The amount you can deduct will be subject to the available net earnings above the protected earnings limit of 60% of net earnings.**

## Your Responsibilities

As an employer, you have a **legal** obligation to:

- implement a Direct Earnings Attachment when we ask you to by making deductions from the employee's net earnings, i.e. after deduction of:
  - income tax
  - Class 1 contributions
  - Amounts deductible by way of contributions to a work place pension scheme which provides payment of annuities or lump sums
    1. to the employee on retirement at a specified age or on becoming incapacitated at an earlier age
    2. on the employees death, to the personal representative, widow, surviving civil partner, relatives or dependants
- make payments to us by the 19<sup>th</sup> day of the month following the month the deduction is made
- keep a record of each deduction taken, and the employee from whose earnings it was made
- continue to operate the DEA until the Local Authority advise you to stop or your employee leaves

If you fail to comply, you may be subject, on conviction, to a fine of up to £1,000.

## Providing Information

**To the Local Authority** - you have a duty to notify us if:

- we ask you to operate a DEA for someone who does not work for you,
- an employee for whom you are operating a DEA leaves your employment
- you are a new business (which starts between 8 April 2013, and 31 March 2014), or a micro business (having fewer than 10 employees), as defined in the Regulations. If you are a new or micro business you are not obliged to operate a DEA although you may do so if this is agreed with your employee.

You must write to us at the address shown on the DEA request letter within 10 days if any of the above applies to you.

**To your employee** – you have a duty to:

- Notify your employee in writing of:
  - the amount of the deduction taken, including any amount taken for administrative costs. (see section on **Administrative Costs**). If this information is shown on the payslip, it will suffice.

You must do this, and record it, no later than the payday after the one on which the deduction for the DEA was taken.

You should also let us know:

- if your business ceases trading.
- If you have any problems or queries in setting up the DEA, please ring the Local Authority on 01738 476050.

## The Definition of Earnings for DEAs

The table below lists what counts and what does not count as earnings:

What <b>counts</b> as earnings for DEAs	What <b>does not count</b> as earnings for DEAs
Wages	Statutory Maternity Pay
Salary	Statutory Adoption Pay
Fees	Ordinary Statutory Paternity Pay
Bonuses	Additional Statutory Paternity Pay
Commission	Any pension, benefit, allowance or credit paid by Department for Work and Pensions, a Local Authority or Her Majesty's Revenues and Customs
Overtime Pay	A guaranteed minimum pension under the Social Security Act 1975
Most other payments on top of wages	Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the United Kingdom
Occupational Pensions if paid with wages or salary	Sums paid to reimburse expenses wholly and necessarily incurred in the course of employment
Compensation payments	Pay or allowances as a member of Her Majesty's forces, other than pay or allowances payable to them by you as a special member of a reserve force
Statutory Sick Pay	Redundancy payments and pay in lieu of notice

If the only earnings your employee receives are those in the right hand column, you cannot calculate a DEA deduction; similarly, if any of these are paid as part of the earnings, they are not included as part of the employee's net earnings.

You must continue to calculate a DEA deduction, if applicable, each pay period until either we tell you to stop or your employee leaves your employment.

## Net Earnings

You must take the amount for the Direct Earnings Attachment directly from your employee's **net** earnings. (**Net** earnings are the amounts the employee earns after taking off income tax, National Insurance and contributions to a pension, including Additional Voluntary Contributions, Free Standing Additional Voluntary Contributions and Stakeholder Pension Contributions).

## Table of Amounts to be Deducted by the Employer

<b>TABLE A: WHERE EARNINGS ARE PAID WEEKLY</b>	
AMOUNT OF NET EARNINGS  (Net earnings are gross pay, less tax, National Insurance and pension contributions)	DEDUCTION (PERCENTAGE OF NET EARNINGS)  (Net earnings are gross pay, less tax, National Insurance and pension contributions)
Less than and exactly £100	Nil
Exceeding £100 but not exceeding £160	3
Exceeding £160 but not exceeding £220	5
Exceeding £220 but not exceeding £270	7
Exceeding £270 but not exceeding £375	11
Exceeding £375 but not exceeding £520	15
Exceeding £520	20

<b>TABLE B: WHERE EARNINGS ARE PAID MONTHLY</b>	
AMOUNT OF NET EARNINGS  (Net earnings are gross pay, less tax, National Insurance and pension contributions)	DEDUCTION (PERCENTAGE OF NET EARNINGS)  (Net earnings are gross pay, less tax, National Insurance and pension contributions)
Less than and exactly £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1160	7
Exceeding £1160 but not exceeding £1615	11
Exceeding £1615 but not exceeding £2240	15
Exceeding £2240	20

If an employee is paid 2 weekly, the total net wage is divided by 2 and table A is used to check the percentage rate.

If an employee is paid 4 weekly, the total net wage is divided by 4 and table A is used to check the percentage rate.

### Holiday Pay

If an employee is paid a wage which includes holiday pay paid in advance, the net wage is averaged, and the percentage rate applied to the average figure, as follows:

Employee receives one weeks wage and 2 weeks holiday pay. Total net payment for 3 weeks = £850.

$$£850 / 3 = £283.33$$

$$£283.33 \times 11\% = £31.17$$

Total deduction from net wage of £850 = £93.51 (£31.17 x 3).

## **Rounding**

The exact amount of the net wage is used against table A & B. If the percentage amount calculated results in a fraction of a penny, it is rounded to the nearest whole penny, with a result of exactly half a penny being rounded down to the nearest whole penny below, as follows:

Net wage £235.63 per week

$£235.63 \times 7\% = £16.4941$

Weekly deduction = £16.49

Net wage £1547.99 per month

$£1547.99 \times 11\% = £170.278$

Monthly deduction - £170.28

## **Administrative costs**

For each pay period when you calculate the DEA deduction, you may also take up to £1 from your employee's earnings towards administrative costs. You can take this even if it reduces the employee's income below the protected earnings proportion.

\* Where you decide to apply an administration charge of £1.00, this deduction may bring the employees pay below the National Minimum Wage. Employers should check <https://www.gov.uk/national-minimum-wage/employers-and-the-minimum-wage>, or contact the ACAS helpline for advice. It is a criminal offence for employers to not pay someone the National Minimum Wage or National Living Wage.

Please note that the administration charge of £1.00 is only applied when a DEA deduction is actually made, and cannot be deducted for any pay period when no DEA deduction is made.

## **Refunds**

In the event that a refund of deducted monies is required it is Perth and Kinross council policy to return such monies back to their original source i.e. if a Housing Benefit debt has been paid and there now exists a credit by virtue of over-payment through a Direct Earnings Attachment, then we would refund this credit back to the employer.