

DIRECT EARNINGS ATTACHMENTS – AN EMPLOYER’S GUIDE

Please read first - Very Important Information

On 4 March 2013 the Social Security (Overpayment and Recovery) Regulations 2013 were laid before Parliament effectively allowing the Department for Work and Pensions (DWP) and Councils to introduce Direct Earnings Attachments (DEAs) to recover money owed. These regulations became statute on 8 April 2013.

If you are using a computerised payroll system and you receive a request to set up a DEA you will need to:

1. Manually calculate the amount to deduct from earnings - please see how to do this in the section 'How do I calculate the amount to deduct?'
2. Manually check whether there are any other orders currently in place - as the DEA may take priority over these - please see a full list of the orders and how they may impact on a DEA in the section 'Employee has other Court Orders against them'.
3. In cases where the DEA does take priority over another order, consider whether other orders need to cease or deduction amounts be recalculated
4. Ensure, in cases where other orders cannot be applied, that these are removed manually from the payroll system and subsequently re-instated once a DEA ceases.

Please contact the Local Authority on **01724 296139** if you require any further information or help in operating a DEA.

These guidance notes explain what you, as an employer, need to do if we ask you to implement a Direct Earnings Attachment. It tells you:

- how to operate and make payments for a Direct Earnings Attachment, and
- what your legal responsibilities are.

This leaflet is intended to help you understand the main points about Direct Earnings Attachments. It is not a full description or statement of the law.

CONTENTS

Introduction to Direct Earnings Attachments (DEA)

The Department for Work and Pensions (DWP) and Local Authorities are responsible for recovering money owed to the State as a result of debt arising under the Social Security Administration Act 1992. Where the Secretary of State or authority administering Housing Benefit has been unable to recover money owed to the DWP by customers not currently in receipt of benefit, that money may now be recovered by deduction from the customer's earnings. The Welfare Reform Act 2012, which became law in March 2012, allows DWP Debt Management and Local Authorities 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, will come into force on 8 April 2013 and the regulations are available on the internet. 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.

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 employee's death, to the personal representative, widow, surviving civil partner, relatives or dependants
- make payments to us by the 19th 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 advises 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 01724 296139.

The definition of earnings for DEAs

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

What counts as “earnings” for DEAS	What does not count 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 DWP, a Local Authority or HMRC
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 the 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 to be 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).

How do I operate a DEA?

We will send you a letter (notice) which tells you to apply a DEA for your employee. This notice will include a payment schedule which will inform you of:

- when to send us payments
- where to send us payments
- how you can pay us

We will include the **National Insurance number** of our customer on all our letters we send to you.

We will ask you to make payments in line with your payroll, so if your employee is paid weekly or monthly, you should pay us at the same time. However, if your employee is paid weekly you must still calculate and deduct the payment weekly, but you can pay us monthly if you prefer.

It is your responsibility to ensure you take the right amount from your employee's earnings each week or month and pay it to us.

When you calculate the DEA deduction amount, you must:

- ensure that your employee has enough net earnings in the pay period for you to calculate a deduction (see table A & B in the table below)
- check that the correct percentage rate has been applied against those net earnings
- check that the total of all deductions does not leave the employee with less than the **protected earnings proportion**, which is **60% of their total net earnings during the calculating period to which the deduction relates**

If there is already a Direct Earnings Order in place from CMG, or other priority orders are in place, please refer to the examples on the following pages. If you wish to discuss this with us or if you receive a request from CMG after we have asked you to implement a deduction, and you have any questions, please telephone us on **01724 296139**.

How do I calculate the amount to deduct?

- work out the employee's net earnings as defined previously
- use table A/B to find the deduction percentage rate for the employee's net earnings
- use the percentage figure against the net earnings figure to calculate the amount to be deducted

Table of amounts to be deducted by employer

REGULATION 20(3)

99SCHEDULE 2

AMOUNTS TO BE DEDUCTED BY EMPLOYERS UNDER DIRECT EARNINGS ATTACHMENT

TABLE A: WHERE EARNINGS ARE PAID WEEKLY

Amount of Net Earnings (Net Earnings are gross pay, less tax, National Insurance and pension contributions)	Deduction Rate (% of Net Earnings)
Less than £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

TABLE B: WHERE EARNINGS ARE PAID MONTHLY

Amount of Net Earnings (Net Earnings are gross pay, less tax, National Insurance and pension contributions)	Deduction Rate (% of Net Earnings)
Less than £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1,160	7
Exceeding £1,160 but not exceeding £1,615	11
Exceeding £1,615 but not exceeding £2,240	15
Exceeding £2,240	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 week's 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 ($£31.17 \times 3$)

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.

Failure to take deductions or incorrect deductions made

If you fail to take a deduction from the employee's net earnings when it is appropriate to make a deduction, or take an incorrect amount you should correct this on the next payday or paydays. Where the incorrect amount is because the deduction was less than the amount specified under the regulations then you should first:

- deduct the amount required for the current pay period
- then include the difference between the incorrect and correct amount

Please note that the total to be deducted, including adjustments for an incorrect deduction, along with other deductions in place, must not leave the employee with less than the protected earnings limit of 60% for each pay period.

Where the incorrect amount is because the deduction was more than the amount specified under the regulations then you should first:

- deduct the amount required for the current pay period
- then reduce the deductions amount by the excess previously taken

It is important to note that if a deduction is reduced in any week or month simply because the DEA along with other orders in place will breach the protected earnings limit of 60% (Example 3 refers) this is NOT a shortfall as described above. A shortfall only occurs when an incorrect amount has been deducted in error, or when one or more deductions have been missed.

Examples of Direct Earnings Attachment in practice

Example 1

A weekly paid earner with no prior attachment orders. A person with net earnings of £385 per week will have a deduction of £57.75 per week (in accordance with the deduction rates table at 15%).

Example 2

A weekly paid earner that already has an existing attachment order for child maintenance deductions. A person with net earnings of £250 per week with an existing attachment order of £60 per week for child maintenance will have a deduction of £17.50 (in accordance with the deduction table at 7%).

Example 3

A monthly paid earner with existing priority attachment orders totalling £486. A person with net earnings of £1620 per month should have a DEA deduction of £243 (in accordance with the deduction table at 15%). However, this deduction in addition to the existing deductions of £486, will breach the protected earnings limit of 60%. The maximum deduction we can make in this instance would be £162.

Calculation:

Earnings x 40% = £648 (maximum amount for total deductions)

Existing priority attachment order in place = £486

15

DEA deduction is = £243

£648 - £486 = £162 (maximum amount available for the DEA deduction)

Therefore, although the deduction rates table states that a deduction of £243 should be taken, the protected earnings limit means that the amount will be restricted to £162

What if my employee does not earn enough for me to make the deduction?

If the weekly or monthly earnings are below the threshold (see table A & B) you cannot calculate a DEA deduction.

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.

Making payments to the Local Authority

On receipt of a notice to operate a DEA, you must:

- make regular payments until you calculate the balance is cleared
- or make regular payments to us until informed by us to stop
- pay the amount you take from your employee's wages to North Lincolnshire Council as soon as possible, but no later than the 19th day of the month following the month in which you have taken it. (For example, if you take the money on 30 September, you must send it to us before 19 October; if you take the money on 1 October, you must send it to us before 19 November).

You can make a payment to us:

- by telephone/internet banking/ACT

If your bank offers a bill paying facility and you wish to make a payment using the telephone/internet banking/ automated credit transfer, the bank account details to quote for the transfer of funds are:

Sort code: 20-76-30

Account Number: 83416593

Reference: This will be the employee's Invoice Number

- by post

If you need to pay by cheque, make it payable to '**North Lincolnshire Council**' and write the employee's Invoice Number on the back of the cheque. Please send the cheque together with the payment schedule to:

North Lincolnshire Council
Civic Centre
Ashby Road
Scunthorpe
DN16 1AB

For payment method ACT or cheque you **MUST** send us a Direct Earnings Attachment payments schedule so the payment(s) can be correctly allocated.

The Direct Earnings Attachment payments schedule must include the following details for each liable person:

- their full name (forenames and surname)
- their National Insurance Number
- the amount of the deduction (in pounds sterling), or
- the reason for nil deduction, if appropriate
- the invoice number

The amount of the automated credit transfer or cheque must be the same as the total amount of deductions shown on the Direct Earnings Attachment payments schedule.

Please do not send cash through the post.

Do not use this schedule to recover or deduct previous overpayments.

Possible Questions & Answers

Employee has other court orders against them

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.

Employee thinks the amount they owe is wrong

If your employee thinks that the amount of money they owe is wrong, you should advise them to contact us on **01724 296139**