

Direct Earnings Attachment

A Guide for Employers

What this Guide is about

This guide explains what you, as an employer, need to do if the Revenues Service asks you to implement a Direct Earnings Attachment (DEA). Where you receive a notice to operate a DEA we ask you to read the information contained in this guide. It provides information on:

- what a DEA is
- how a DEA operates
- how to calculate a DEA
- your responsibilities, and
- how to make payments to the Local Authority.

This guide is intended to help you understand the main points about a DEA. It is not a full description or statement of the law.

From 8 April 2013 the Department of Work and Pensions (DWP) introduced DEA as a method to recover money owed to The Local Authority (LA) and the DWP.

Initially this method of recovery was operated using only a small sample of cases, acknowledging that payroll software changes (to automate the process) were not due to be introduced until April 2014. From this date, and following the success of the piloted process, Local Authorities and the DWP began to roll out the revised process (incorporating the potential use of DEA) into their business as usual. Any employers who do not have updated payroll software to enable them to operate a DEA will need to continue to operate the process manually (in these cases please see 'How is a DEA calculated?' on page 9).

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Introduction to a Direct Earnings Attachment

The **Welfare Reform Act 2012**, which became law in March 2012, allows the Revenues Service to ask you, as an employer, to make deductions directly from a customer's earnings. We do this by asking you to operate a **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 8th April 2013 and the regulations are available on the internet. Note that these regulations are only in force in England, Scotland and Wales and so exclude Northern Ireland.

A DEA has its own regulations and operates differently from other orders such as Deduction from Earnings Order (DEO), Attachment of Earnings Order (AEO) and Council Tax Attachment of Earnings Order (CTAEO). A DEA does not replace any of these other orders and in some circumstances employers may receive requests to implement deductions for multiple orders for the same employee.

Local Authorities, who can recover monies resulting from Housing Benefit overpayments, also have the power to issue a Direct Earnings Attachment under this legislation.

How does a DEA arise?

The LA is responsible for recovering monies as a result of debt arising from overpaid Housing Benefit.

Where the LA has been unable to recover monies owed to them from customers not in receipt of Housing Benefit, and who have not voluntarily agreed to repay, those monies may be recovered by deduction from the customer's earnings.

We will send you a letter (notice) which tells you to implement a DEA for one of your employees. This notice (which includes a payment schedule) will inform you:

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

We will include the **National Insurance number** of the employee on all our letters we send to you and the **Invoice number of the outstanding debt**.

It is important that you quote these reference numbers:

- on any correspondence you send to us
- in the payee reference field if you make an online BACS payment for an individual employee
- on the back of a cheque, if you make a cheque payment for an individual employee
- if you are making a card payment.

What legal responsibilities does a DEA place on an employer?

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

- calculate a deduction based on the net earnings (using the appropriate tables shown in Appendix 1) for each pay date (see page 9 'How is a DEA calculated?') **or**
- apply a fixed amount calculated by us if we ask you to do so (see page 10)
- pay us the amounts deducted (other than your administrative costs) by the 19th day of the month following the month in which the deduction is made.
- keep a record of each employee from whom a DEA deduction has been made, together with the amount of each deduction

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

What duties does a DEA place on a Local Authority?

To the LA - you have a **duty** to notify us in writing within 10 days:

- of the date the notice has been issued if we have asked you to operate a DEA for someone who does not work for you
- from the date an employee ceases to be in your employment

If either of the above applies you will need to notify us in writing at the address shown on the DEA notice letter.

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**, page 13)
 - how the deduction amount was calculated.

The above information can be provided on the pay-slip. You must do this (and record it) no later than the payday after the one on which the deduction for the DEA was taken.

If you have any problems or queries relating to the DEA, please ring the office on 01264 368000.

Protected Earnings

Where we ask you to operate a DEA you must consider what is known as the Protected Earnings amount which is an amount equal to 60% of an employee's net earnings.

This means that for each pay period where a DEA calculation is applicable, you must additionally ensure (after adding the amount of the DEA to the total amount of other orders that may be already in place) that your employee is left with **at least 60%** of their net wage.

In cases where the addition of the DEA would increase the overall amount of deductions to more than 40% of the net wage, the DEA deduction must be adjusted to an amount that will leave the employee with 60% of their net earnings. This applies even where we have asked you to apply a fixed rate deduction (see page 10).

Therefore, in the circumstance where (before the consideration of a DEA deduction) other orders are already in place and the employees net wage is already equal to or less than 60% of their overall and initial net wage (some other orders do not apply the protected earnings consideration), you should not deduct any DEA amount calculated for that pay period.

This means that in some cases no DEA deduction can be taken but you must still check if a deduction applies for the next and every subsequent pay period, and additionally ensure that a schedule is sent to us in respect of this pay period (see page 19, 20), as this will notify the LA who will have been expecting to receive a payment.

Net Earnings

For the purposes of calculating a DEA deduction, **net** earnings means earnings after the deduction of:

- Income Tax
- Class 1 National Insurance and
- Pension contributions.

The definition of earnings for a DEA

The tables on the following pages list:

- what counts as earnings, and
- what does not count as earnings

Table 1 What counts as ‘earnings’

Wages

Salary

Fees

Bonuses

Commission

Overtime pay

Occupational Pensions, if paid with wages or salary

Compensation payments

Statutory Sick Pay

Payment in Lieu of notice

Most other payments on top of wages

Table 2 What does not count as ‘earnings’

Statutory Maternity Pay

Statutory Adoption Pay

Ordinary Statutory Paternity Pay

Additional Statutory Paternity Pay

Any pension, benefit, allowance or credit paid by DWP, a local authority or HMRC

A guaranteed minimum pension under the Pensions Scheme Act 1993 (b)

Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the United Kingdom

Sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment

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 Redundancy Payments

Only those earnings in Table 1 can be used to calculate a DEA. Any earnings shown in Table 2 are not to be included as part of calculating a DEA deduction.

You must continue to calculate a DEA deduction every pay day until either:

- we advise you to stop
- the employee leaves your employment
- the amount to recover is no longer outstanding or
- we ask you to apply a fixed rate deduction (see page 10).

How is a DEA calculated?

1. Calculate the employee's net earnings (see page 7) for the pay period
2. Find the correct deduction percentage rate based on:
 - a) the frequency of their pay (See tables in Appendix 1)
 - b) the net earnings figure
3. Multiply the net earnings figure by the percentage rate to calculate the DEA amount

Note - if you are calculating a DEA based on a daily rate, you must also multiply the daily rate figure by the number of days in the pay period.

Fixed Rate Deductions

In exceptional circumstances we may write to you to apply a fixed rate deduction amount for an employee. This revised amount should be applied from the next (and each subsequent) pay date following the date you receive the notice. However, if the earnings for any pay date are below the threshold (See tables in Appendix 1) then no DEA deduction can be applied.

Other Orders & Priorities

After calculating the DEA amount, you must consider:

- other priority orders in place and
- the protected earnings amount (see page 6)

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 you should take first.

If your employee has one or more of the following in place, or they are received after a DEA notice has been received, these will take priority over a DEA (and are known as priority orders):

England & Wales

Deduction from Earnings Order (DEO) from Child Maintenance Group (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

Conjoined Arrestment Order (CAO)

Earnings Arrestment (EA)

Current Maintenance Arrestment (CMA)

Where you already have either an EA or CMA in place for an employee and you receive a DEA notice from us, you do not have to apply to the courts for a conjoined order. Applying for a conjoined order only applies where you receive other Scottish orders.

Once these priority orders have been taken into account in your calculation a DEA will then take priority over any other orders (known as non priority orders or notices (such as Local Authority Housing Benefit DEAs) in date order (see below).

The order of non priority orders will be decided by the date of the notice. For Scottish orders this will be decided by the date they were received.

Student Loans

A student loan is not an order but it is treated in exactly the same way as a priority order. This applies in both England & Wales and Scotland.

If you have any further enquiries on orders or priorities, please contact us using the telephone number **01264 368000**.

First DEA deduction (pay day)

The DEA notice issued to you has effect from the next pay day which falls on or after 22 days after the date on the notice letter.

Example, notice issued on 2nd September 2013; therefore the first pay date would be on or after the 24th September 2013.

We will ask you to make payments to us in line with your payroll, so if your employee is paid weekly or monthly, you should pay us at the same time. However, if an employee is paid weekly, although you must still calculate and deduct the payment weekly, you can pay us the deductions for these weeks on a monthly basis if you prefer.

Responsibilities

It is **your responsibility** to ensure you calculate the deduction correctly from your employee's net earnings each pay period and pay that amount 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 tables in Appendix 1)
- check that the correct percentage rate has been applied against those net earnings
- check that the total of all deductions does not exceed 40% and therefore leave the employee with less than the **protected earnings amount** which is **60% of their total net earnings during the calculating period to which the deduction relates** (see page 7)

Important - Please read the following section carefully.

The Revenues Service is responsible for:

- contacting you if you fail to make a payment to us when it is due
- contacting you to verify payment information, if applicable
- refunding monies directly to an employee when the balance of the debt has been reduced to zero but a further payment has been received from an employer
- returning monies to an employer where, under the regulations, no DEA payment should have been made, for example:
 - a payment made to us in error as the earnings for that pay period were under the earnings threshold and no DEA deduction should therefore have been made.
 - a payment made to us in error because other deductions were already 40% or greater of net earnings for that pay period, and therefore no DEA deduction should have been made.

In both these cases you should:

- contact us on the number provided in our letters for information on how these monies can be returned to you.

The Revenues Service is not able to:

- return monies to an employer where a DEA payment was applicable, but was calculated at an incorrect rate, for example:
 - where we have received a payment greater than the one which should have been calculated for a specific pay period

In this case, and from the following pay period(s), you should reduce the amount to be deducted by the excess previously taken.

For example, an employer sends a payment for £100 when only £80 was due. At the next pay period the amount of the DEA to be deducted should be reduced by £20.

- trace and return monies to an employee, where:
- the employer has sent a payment meant for us to another department or account

In this case you should still make a payment to us and additionally, you should make contact with the other department in order to recover the money you incorrectly paid.

Administrative costs

For each pay period where a calculation results in a DEA deduction, you may take up to £1.00* from your employee's earnings towards your administrative costs. This charge is to cover your costs so do not send this administration cost deduction to Local Authority. You can take this charge even if it reduces the employee's income below the 60% protected earnings amount.

* 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.

Making payments to the LA

You are required to pay the amount you have calculated and deducted from your employees net wages to the LA as soon as possible. Ideally this will be at the same time as you make the deduction(s) from your employee's salary.

Methods of payment

1. BACS (Online Banking) (LA preferred method of payment)

LA bank details are:

Account Number: 10524860

Sort code: 30-80-12

Payee Reference: It is critical that you enter the Employees **National Insurance Number (NINO)**' and **invoice number**, where you are making;

- a single BACS payment in respect of an individual employee, or
- a series of single BACS payments in respect of each of a number of individual employees
- where you are making a single consolidated BACS payment in respect of more than one employee.

2. Cheque (Post)

You can also pay by cheque. The cheque should be made payable to:

- Revenues Service, and sent to: Test Valley Borough Council, Beech Hurst, Weyhill Road, Andover, Hants. SP10 3AJ

Cheque reference: It is critical that you write on the reverse of the cheque **BOTH** the **Employees National Insurance Number (NINO)**' and **Invoice number**.

It is also critical that a payment schedule (see page 19 & 20) is completed and sent to us for each cheque payment you make and that the total amount on the schedule and the cheque match. Failure to do so will mean that LA will not be able to allocate payments to the correct

accounts and will result in unnecessary contact to you from LA.

3. Card (Telephone)

If you wish to make a payment by debit card (**or Visa Debit, Debit MasterCard, Maestro, Solo and Visa Electron**) use the telephone number **01264 368000**. Please have your card details and the employees **Invoice number** to hand along with your letter when you ring.

You would not need to complete a schedule when paying by card.

A card payment can only be made for one individual employee and you must quote the Invoice number when you telephone. If you have more than one employee, you must make a separate payment for each employee.

Note – Under no circumstances should you send us a cash payment.

Questions & Answers

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 Appendix 1) you cannot make a DEA deduction **but you must send us a schedule informing us of this.**

You must continue to check if a DEA deduction is applicable each pay period until we tell you to stop, the amount to recover is no longer outstanding or your employee leaves your employment.

I have received a letter from the DWP to apply a fixed rate amount. What is this?

Employees can contact us to negotiate a fixed DEA deduction rate, which is usually a lower amount than the DEA deduction calculated by you. If we decide a fixed rate is applicable, we will write to you to apply a fixed rate deduction amount. This new rate will apply from the next pay period after you have received the new notice and until we tell you to stop. The protected earnings rules still applies to a fixed rate deduction (see page 10).

I have been applying a fixed rate amount as requested by the LA but the

employees earnings have now changed. What do I do?

If you receive a notice informing you to apply a fixed rate amount, it should be applied from the next available pay day and continue to apply this rate for future pay periods until DWP contact you to either apply a different rate or advise you to stop deductions altogether. However, no DEA deduction can be made (calculated or fixed rate) from earnings which are below the threshold (See Appendix 1). The protected earnings rules still apply to a fixed rate deduction (see page 10).

I have reduced the DEA deduction from January's pay period because other orders in place would reduce the employee's net earnings to below 60% if the full deduction was applied. Do I need to make up the difference in the February pay period?

No, this should not be carried forward. A deduction should only be carried forward where a shortfall occurs due to an incorrect lesser amount being deducted in error or when one or more deductions have been missed.

I send payments to other departments, for example the Child Maintenance Group. Can I use either of their accounts to send DEA deduction payments?

No. Only use the account details provided in this guide or as shown on the DEA schedule when you make a DEA payment to us. The departments work separately and collect the payments for different reasons. Please note, if you send a payment to another department in error it will be your responsibility to contact the other department and to recover the money.

What if the 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 the telephone number at the top of the letter **they** received about the Direct Earnings Attachment.

What if the employee thinks the amount I have calculated is too much?

If they think that the amount you have calculated is too much, you should first check that the amount you have calculated following the instructions in this guide is correct. If it is correct, you should explain to the employee that you have made the deduction as instructed to do so. If they feel that this is too much for them to manage, you should advise them to telephone on the number at the top of the letter **they** received about the Direct Earnings Attachment.

Appendix 1

The table below is for calculation of the deduction at the **Standard Rate**.

TABLE A: DEDUCTIONS FROM EARNINGS RATE (Standard)			
AMOUNT OF NET EARNINGS		DEDUCTION RATE TO APPLY	
Net earnings are gross pay, less income tax, Class 1 National Insurance and superannuation contributions)		(Percentage of net earnings)	
Daily earnings	Weekly Earnings	Monthly Earnings	
Up to £15	Up to £100	Up to £430	Nil
Between £15.01 and £23	Between £100.01 and £160	Between £430.01 and £690	3
Between £23.01 and £32	Between 160.01 and £220	Between £690.01 and £950	5
Between £32.01 and £39	Between £220.01 and £270	Between £950.01 and £1160	7
Between 39.01 and £54	Between £270.01 and £375	Between £1160.01 and £1615	11
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	15
£75.01 or more	£520.01 or more	£2240.01 or more	20

The table below is for calculation of the deduction at the **Higher Rate**.

TABLE A: DEDUCTIONS FROM EARNINGS RATE (Standard)			
AMOUNT OF NET EARNINGS		DEDUCTION RATE TO APPLY	
Net earnings are gross pay, less income tax, Class 1 National Insurance and superannuation contributions)		(Percentage of net earnings)	
Daily earnings	Weekly Earnings	Monthly Earnings	
Up to £15	Up to £100	Up to £430	5
Between £15.01 and £23	Between £100.01 and £160	Between £430.01 and £690	6
Between £23.01 and £32	Between 160.01 and £220	Between £690.01 and £950	10
Between £32.01 and £39	Between £220.01 and £270	Between £950.01 and £1160	14
Between 39.01 and £54	Between £270.01 and £375	Between £1160.01 and £1615	22
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	30
£75.01 or more	£520.01 or more	£2240.01 or more	40

Direct Earnings Attachment Payments Schedule.

The schedule overleaf must be completed:

- when making BACS payments
- when making any Cheque payment
- when a £0.00 DEA deduction is due for an employee

This schedule must be returned to us at the address below, this is also the address as shown above.

If you are paying by **Cheque** (Post) ensure it is payable to **Test Valley Borough Council** and that it is referenced on the reverse with the relevant invoice number / s if the payment is for more than one employee.

If you are paying by **BACS (online banking)** complete the transaction using the bank details below:

Revenues Service bank details

Sort Code: **30-80-12**

Account Number: **10524860**

Payee Reference: Please quote the relevant invoice number / s.

If you are paying by **card** please ring the number at the top of the letter you received.

Important

The amount of the cheque or online payment must be the same as the total amount of the deductions shown on the Direct Earnings Attachment payments schedule overleaf.

Do not send cash through the post. Do not use this schedule to recover or deduct previous overpayment.

Direct Earnings Attachment Payments Schedule (Appendix 2)

To: LA

From: Employer

Revenues Service, Test Valley Borough Council
Beech Hurst, Weyhill Road,
Andover, Hants SP10 3AJ

Item	Amount	Week/ Mth No	Employees Surname followed by Forename	Staff / Reference Number	Housing Benefit Invoice Number	Reason for nil deduction if applicable
1	£					
2	£					
3	£					
4	£					
5	£					
6	£					
7	£					
8	£					
9	£					
10	£					

To be completed by Employer

This sheet total Cheque No

£

Name Paid By BACS
(Tick if applicable)

Phone Number Date

For LA use only

Completed By

Date

Checked By:

