

Guide to Direct Earnings Attachments for the Collection of Housing Benefit Overpayments

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1. Direct Earnings Attachments - Introduction

Tunbridge Wells Borough Council is responsible for recovering money owed to it in respect of debts arising under the Social Security Administration Act 1992. From April 2013, Local Authorities have been given the power to recover overpaid Housing Benefit by deductions from earnings without the need to apply for a court order. This is done by using a Direct Earnings Attachments (or DEA). Local Authorities were given this power by The Social Security (Overpayments and Recovery) Regulations 2013 and The Social Security (Overpayments and Recovery) Regulations 2015. The full regulations can be found on this website: <http://www.legislation.gov.uk>

1.1 Why is the Council using a DEA?

DEAs give us the opportunity to recover overpaid benefits from debtors who are employed if they either refuse to repay, are unable to agree an acceptable repayment plan or who have defaulted on a voluntary repayment arrangement.

1.2 Do employers have to implement a DEA for the Council?

Yes, employers have a legal obligation to do so unless they are a new business (which started between 8 April 2013 and 31 March 2014), or a micro business (having fewer than 10 employees). In such cases employers are not obliged to operate a DEA although they may do so.

2. What payments are counted as earnings for the purposes of a DEA?

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 Pensions Scheme Act 1993
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
Periodic payments by way of compensation for the loss, abolition or relinquishment or diminution in the emoluments of any office or 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 or a reserve force
Statutory Sick Pay	Lump sum redundancy payments in lieu of notice

3. What are net earnings?

Your employer must take the amount for the Direct Earnings Attachment directly from your **net** earnings. Net earnings are the earnings left after deduction of:

- Income Tax
- Class 1 National Insurance contributions
- Contributions to a work place pension (including Additional Voluntary Contributions, Free Standing Additional Voluntary Contributions and Stakeholder Pension Contributions)

4. Amounts to be deducted by the employer

TABLE A: Where earnings are paid weekly (Regulation 20 (3))

Amount of Net Earnings	Deduction (% 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 (Regulation 20 (3))

Amount of Net Earnings	Deduction (% 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%

TABLE C: Where earnings are paid weekly (Regulation 20 (3B))

Amount of Net Earnings	Deduction (% of net earnings)
£100 or less	5%
Exceeding £100 but not exceeding £160	6%
Exceeding £160 but not exceeding £220	10%
Exceeding £220 but not exceeding £270	14%
Exceeding £270 but not exceeding £375	22%
Exceeding £375 but not exceeding £520	30%
Exceeding £520	40%

TABLE D: Where earnings are paid monthly (Regulation 20 (3B))

Amount of Net Earnings	Deduction (% of net earnings)
£430 or less	5%
Exceeding £430 but not exceeding £690	6%
Exceeding £690 but not exceeding £950	10%
Exceeding £950 but not exceeding £1,160	14%
Exceeding £1,160 but not exceeding £1,615	22%
Exceeding £1,615 but not exceeding £2,240	30%
Exceeding £2,240	40%

4.1 The protected earnings level

Please Note: the total of all deductions (the DEA plus any other deductions in place) cannot leave you with less than the **protected earnings proportion**, which is **60% of your total net earnings** during the calculating period to which the deduction relates.

4.2 Employees who are paid every 2 weeks

If you are paid 2 weekly, the total net wage is divided by 2 and table A or C is used to check the percentage rate.

4.3 Employees who are paid every 4 weeks

If you are paid 4 weekly, the total net wage is divided by 4 and table A or C is used to check the percentage rate.

4.4 Holiday Pay

If you are paid a wage which includes holiday pay paid in advance, the net wage is averaged, and the percentage rate applied to the average figure. For example:

The employee received one week's wage and two weeks holiday pay. Total net payment for 3 week = £850. $£850 \div 3 = £283.33$ $£283.33 \times 11\% = £31.17$ Total deduction from the net wage for 3 weeks of £850 = £93.51 ($£31.17 \times 3$).

4.5 Administrative costs

£1 may be deducted from your earnings towards administrative costs for each pay period when the DEA deduction is calculated. Your employer can take this even if it reduces your income below the protected earnings proportion.

5. What if the employer fails to take deductions or makes incorrect deductions?

If the employer fails to take a deduction from your net earnings when they should have or takes an incorrect amount they 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 they should first;

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

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

- deduct the amount required for the current pay period.
- then reduce that deduction amount by the excess previously taken.

6. I have other court orders against me, which has priority?

Courts can make orders that mean employers must take money directly from your earnings in a similar way to how the Council asks your employer to make deductions for a DEA. For example, you may have an Attachment of Earnings Order (England & Wales) or a Deduction from Earnings Order (for Child Maintenance). The DEA can be imposed without a court order, but if you have any other deduction orders against you there are rules that tell employers which money they should take first.

If you have one or more of the following in place, they will take priority over a DEA:

England & Wales

- Deduction from Earnings Order (DEO) from the 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
- 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 to be deducted will be subject to the available net earnings above the protected earnings limit of 60% of net earnings.

7. What if I do not earn enough?

If the weekly or monthly earnings are below the threshold (see table A, B, C or D in Section 4), the DEA deduction cannot be calculated and the Council must be advised of such.

8. If you think the amount you owe is wrong.

If you think that the amount of money you owe is wrong, contact the Overpayments Team on 01892 526121.

9. You think the amount of the deduction is too much.

If you think that the amount deducted is too much, you should first check that the amount being deducted is correct according to table A, B, C or D on the basis of your earnings and other orders in place. If you feel that this is too much to manage, you should contact the Overpayments Team on 01892 526121. However, this action is being taken because you have failed to contact the Council regarding repayment of the debt and it is therefore unlikely that this action will be suspended or ceased unless payment of the invoice is made in full.