

# **An Employer's 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) Amendment 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?**

Not everyone enters into a voluntary repayment agreement. 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, you have a legal obligation to do so unless you 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 you are not obliged to operate a DEA although you may do so.

If you fail to comply with your duties, you could be subject, on conviction, to a fine of up to £1000.

### **1.3 What if my payroll software has not been updated to allow for DEAs?**

As this is a new procedure, it may be that your computerised system has not yet been updated to deal with DEAs. The Department for Work and Pensions is currently working with the Chartered Institute of Payroll Professionals, Employer Representatives and Payroll Software providers in order to develop the right long term solution but, until your software is changed, you will also need to follow the instructions below as well as the general guidance in this document. Once your system is updated, the information on this first page may no longer be needed. Until your software is updated, if you are using a computerised payroll system and you receive a request to set up a DEA you will need to:

- a. Manually calculate the amount to deduct from earnings. Please see how to do this in the section 'How do I work out the amount to deduct?'
- b. 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 'Your employee has other Court Orders against them'.
- c. In cases where the DEA does take priority over another order, consider whether other orders need to cease or deduction amounts be recalculated
- d. 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.

## **2. Direct Earnings Attachments – Background Information**

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 you may still receive requests to implement deductions for a DEO or AEO for your employees.

### **2.1 Your responsibilities as an employer**

You have a legal obligation to

- implement a Direct Earnings Attachment when we ask you to make deductions from the employee's net earnings.
- make payments of the amounts deducted 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 Tunbridge Wells Borough Council advises you to stop, the debt is cleared, or your employee leaves your employment.
- ensure you take the right amount from your employee's earnings each week or month and pay it to us.

### **2.2 Providing information**

**a) From Tunbridge Wells Borough Council** - we will send you a notice asking you to apply a DEA to your employee's earnings. This will include all the information you need to have in order to set up the DEA.

**b) To Tunbridge Wells Borough Council** – 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 started 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 of the date of that letter if any of the above applies to you. You should also let us know if your business ceases trading.

**c) 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 6.2 (f) on administrative costs). If this information is shown on their payslip, it will suffice.
- How that deduction was calculated.

You must do this (and record it) no later than the payday after the one on which the deduction for the DEA was taken. Please contact us on 01892 526121 if you require any further information or help operating this DEA.

### **3. What does an employer have to do to operate a DEA?**

#### **3.1 The notice from the Council**

The Council will send you a letter (officially called a notice) which tells you to apply a DEA for your employee and gives you the information you will need in order to apply it. This includes:

- The name and national insurance number of the person from whose wages you will make the deduction.
- If we have it, their staff number, pay roll number or similar identifying number.
- The percentage rates at which deductions are to be made.
- The proportion of their wages which is protected (see section 6.2 (a))
- When to send us payments.
- The address to which you are to send the payments if you are going to pay by cheque.
- Details of the account into which the payments are to be transferred if you are paying us by direct credit transfer.

#### **3.2 The deductions**

Once you receive the notice, you will need to check that your employee earns enough to allow a deduction to be made. If he/she does, you then calculate how much to take from their earnings using the information provided by the Council and make the deductions.

#### **3.3 The payments to the Council**

Once you have taken the money, you must pay it over to the Council within set time limits. 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 every week, but you can pay us 4 weekly if you prefer. Please let us know if you will be doing this by telephoning 01892 526121. 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.

#### 4. 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

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.

#### 5. What are net earnings?

You must take the amount for the Direct Earnings Attachment directly from your employee’s **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)

## 6. How do I work out the amount to deduct?

### 6.1 When calculating the DEA deductions amount, you must:

- ensure that your employee has enough net earnings in the pay period for you to calculate a deduction (see tables A, B, C and D below).
- Apply the correct percentage rate against those net earnings.
- check that the total of all the 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.

### 6.2 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)
£100 or less	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)
£430 or less	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))**

<b>Amount of Net Earnings</b>	<b>Deduction (% of net earnings)</b>
£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%

**a) The protected earnings level**

Please Note: the total of all deductions (the DEA plus any other deductions in place) cannot 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.

**b) Employees who are paid every 2 weeks**

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

**c) Employees who are paid every 4 weeks**

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

**d) 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. For example:

The employee received one week's wage and two weeks holiday pay. Total net payment for 3 weeks = £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 ( $£31.17 \times 3$ ).

**e) Rounding**

The exact amount of the net wage is used against table A, B, C and D. 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

**f) Administrative costs – what you can charge your employee.**

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.



## 7. What if you fail to take deductions or make incorrect deductions?

If you fail to take a deduction from the employee's net earnings when you should have 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 for the previous 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 that deduction 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 any other orders in place will breach the protected earnings limit of 60% this is NOT considered a shortfall as described above. A shortfall only occurs when an incorrect amount has been deducted in error, or where one or more deductions have been missed.

## 8. Your employee has other court orders against them, which has priority?

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. For example, your employee 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 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, 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 you can deduct will be subject to the available net earnings above the protected earnings limit of 60% of net earnings.

## 9. 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, C & D in Section 6) ) you cannot calculate a DEA deduction. You must tell the Council why a deduction cannot be made by using a Direct Earnings Attachment payments schedule (see section 13.4 for information on this).

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

## **10. Your 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 the Overpayments Team on 01892 526121.

## **11. Your employee thinks the amount of the deduction is too much.**

If they think that the amount you have calculated 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 their earnings and other orders in place. If the amount is correct, you should explain 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 contact us.

## **12. What happens once I am operating a Direct Earnings Attachment?**

Once you have started operating a DEA, you must continue to make payments to us until we tell you to stop or you have deducted the maximum amount that needs to be recovered from the earnings. We shall contact you when deductions are to cease or if the amount deducted should change. If there is a change of circumstances which means that you can no longer operate the DEA, you must notify us in writing within 10 days of that change happening. In the first instance though, please telephone us to let us know as we may be able to speed up the administration process. If you need to tell us about a change like this, please telephone the Overpayments Team on 01892 526121.

## **13. Making payments to Tunbridge Wells Borough Council**

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

- make regular payments to us until we tell you to stop or the maximum amount to be recovered has been taken from your employees earnings.
- pay the amount you have taken from your employee's wages over to Tunbridge Wells Borough 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 30th September, you must send it to us before 19th October. If you take the money on 1st October, you must send it to us before 19th November.

### **13.1 By BACS (Automated Credit Transfer)**

This is our preferred method of payment, because of its security and quick clearance times. When setting up a payment by this method, you will need the following information:

<b>Tunbridge Wells Borough Council</b>	
Bank Sort Code	30-00-02
Bank Account Number	01396914
Bank	Lloyds TSB
Employee's Invoice Number	This will be shown on the DEA Notice you will be sent

If the payment is for one employee, enter the employee's invoice number. If the payment covers multiple employees, enter 'DEA' as reference. You will then need to send a Direct Earnings Attachment payment schedule to us so we know who the payment refers to. Please see point 13.4 for instructions about this.

### 13.2 Paying by cheque

If you need to pay by cheque, please make it payable to '**Tunbridge Wells Borough Council**' and write the employee's invoice number on the back of the cheque. Please send the cheque to:

**Tunbridge Wells Borough Council, Revenues Services, Town Hall, Tunbridge Wells, Kent, TN1 1RS.**

If you are paying by cheque, you will need to attach a Direct Earnings Attachment payment schedule to the cheque so we know who the payment refers to. Please see point 13.4 for instructions about this.

### 13.3 Paying by telephone

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:** 30-00-02 **Account Number:** 01396914 **Reference:** This will be the employee's **Invoice Number** as shown on the DEA notice.

### 13.4 Direct Earnings Attachment payments schedule

For payments by BACS (Automated Credit Transfer) or cheque you must send us a Direct Earnings Attachment payments schedule.

The Direct Earnings Attachment payments schedule must include the following details for each person for whom you were asked to make deductions from earnings:

- their full names (forenames and surname).
- their Invoice Number as shown on the DEA notice you were sent.
- the amount of the deduction (in pounds sterling) that has been deducted or
- the reason why a deduction cannot be made when appropriate

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.

### 13.5 E-mail us the Direct Earnings Attachment payments schedule

If you prefer, you can e-mail an electronic copy of the schedule to us at [overpayments@tunbridgewells.gov.uk](mailto:overpayments@tunbridgewells.gov.uk) and the payment can follow.

Please include 'DEA notice' in the subject of your e-mail.

## **14. 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 with an existing attachment order for child maintenance**

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.**

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  $\text{Earnings} \times 40\% = £648$  (maximum amount for total deductions) Existing priority attachment order in place = £486 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.

## **15. Where can I get more information and advice?**

If you need more information about, or help to operate a Direct Earnings Attachment, please telephone Tunbridge Wells Borough Council Overpayments Team on 01892 526121. We will be happy to discuss any questions you may have.

## Direct Earnings Attachment – Employer's Checklist

A	Does the person named in the notice work for you?	Yes – go to B. No – tell the Council within 10 days
B	Are you a new or micro business? (see point 1.2 for guidance)	Yes – contact the Council 01892 526121 No – go to C.
C	Are there any orders for deductions already in place that will take priority over the DEA and prevent it being set up?	Yes – Tell the Council within 10 days No – go to D.
D	Calculate your employee's net earnings for DEA purposes (see point 5 for guidance)	
E	Do they earn enough to allow deductions to be made? (see point 6 for guidance)	Yes – go to F. No – tell the Council within 10 days
F	Decide how much of their net earnings will be deducted (see point 6 for guidance)	
G	If you deduct that amount, will they be left with less than 60% of their wages -the protected amount? (see 6.2a for guidance)	Yes – If possible, adjust your deductions level to leave them with 60% of their net earnings OR within 10 days, tell the Council that no deductions can be made. No – go to H.
H	Make sure the total amount deducted through this and any previous deductions is not more than the total amount stated in the notice.	
I	Make the necessary arrangements to your payroll for the deduction to be made.	
J	Notify your employee of the amount to be deducted no later than the pay day on which the deduction is made.	
K	Pay the amount deducted from your employee's earnings to the Council no later than the 19th day of the month following the month in which the deduction was made. If paying by BACS or cheque, send the Council a Direct Earnings Attachment payment schedule with details of the payment.	