

Redditch Borough Council

Direct Earnings Attachment Guidance For Employers

Under Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 you are hereby requested to make deductions from the net earnings as defined in column 2 of Table A and B in Schedule 2 of the aforementioned regulations (table also included below) of the person named at the times and at the rate specified in regulation (3)(a),(b)and(c).

The first such deduction should be made as soon as reasonably practical, and no later than the 22nd day of next month. You must not deduct any monies which would reduce your employee’s pay below 60% of their net earnings.

I have attached some guidance notes and the appropriate regulations to assist you in this matter.

AMOUNTS TO BE DEDUCTED BY EMPLOYERS

TABLE A: WHERE EARNINGS ARE PAID WEEKLY

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

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%

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Introduction

The following explains 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 (DEA)
- What your legal responsibilities are as an employer

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

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 to calculate the amount to deduct for DEA's'.
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 'Question and Answers'.
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 reinstated once a DEA ceases.

Please email overpayments@bromsgroveandredditch.gov.uk if you require any further information or help in setting up or operating a DEA.

Your responsibilities as an Employer

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:
 1. Income tax
 2. Class 1 contributions
 3. Amounts deductible by way of contributions to a workplace pension scheme which provides payment of annuities or lump sums-
 - To the employee on retirement at a specified age or on becoming incapacitated at an earlier age
 - On the employees death, to the personal representative, widow, surviving civil partner, relatives or dependants.
- Make payments to us by the 22nd 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 Redditch Borough Council advise you to stop or your employee ceases to be employed.

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

Providing information to Redditch Borough Council:

As an employer you have a duty to notify us if:

- We have asked 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 cease trading

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.

Providing information to your employee:

As an employer 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). It is sufficient to show this information on the payslip.
- You must do this (and record it) no later than the payday after the one on which the deduction for the DEA was taken.

The definition of Earnings for DEAs

What counts as 'earnings' for DEAs:

- Wages
- Salary
- Fees
- Bonuses
- Commission
- Overtime Pay
- Most other payments on top of wages apart from sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment.
- Occupational pensions, if paid with wages or salary
- Compensation payments
- Statutory Sick pay

What does not count as 'earnings' for DEAs:

- Statutory Maternity Pay
- Statutory Adoption Pay
- Ordinary Statutory Paternity Pay
- Additional Statutory Paternity pay
- Any pension, benefit, allowance or credit paid by DWP, local authority or HMRC
- A guaranteed minimum pension under the Social Security Pensions Act 1975.
- 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.
- Redundancy payments and pay in lieu of notice.

If the only earnings your employee receives are those under the heading of 'what does not count as earnings for DEA's, 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 to operate a DEA

We 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 on the Direct Earnings Attachment request itself).
- Check the correct percentage rate to apply 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, please refer to the examples on the following pages. If you have any queries please email these to overpayments@bromsgroveandredditch.gov.uk

How to calculate the amount to deduct for DEAs

- Work out the employee's net earnings as defined previously
- Use table A and B on the DEA request to find the deduction percentage rate for the employee's net earnings.
- Use the percentage rate against the net earnings figure to calculate the amount to be deducted.
- If an employee is paid 2 weekly, the total net wage is divided by 2 and the 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, is 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 (see the Direct Earnings Attachment Request). 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. Any deduction for your costs is to be made after the DEA calculation and can still be taken even if it reduces the net pay to less than 60% of employee's net earnings.

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 as follows;

Where the incorrect amount was less than the amount specified and there was a shortfall, under the regulations you should:

- Deduct the amount required for the current pay period
- Then include the difference between the incorrect and correct amount previously taken.

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:

- Calculate the amount required for the current pay period
- Then reduce the deduction by the excess amount 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% (see example 3 below) 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 Attachments in Practice

Example 1

An employee paid weekly with no prior attachment orders.

An employee with net earnings of £385 per week will have a deduction of £57.75 per week (in accordance with Deduction table A found on the Direct Earnings Attachment request itself) which equates to 15%.

Example 2

An employee paid weekly with an existing attachment order for child maintenance.

An employee with net earnings of £385.00 per week with an existing attachment of earnings order of £60.00 per week for child maintenance will have a deduction of £57.75 (in accordance with Deduction Table A found on the Direct Earnings Attachment request itself) which equates to 15% of their net earnings as existing attachment of earnings orders and not taken into account when looking at net (see section 'The definition of Earnings for DEAs').

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 Deduction Table A 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
- 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.

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 table A & B on the DEA request) 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. Please notify Redditch Borough Council if your employee's net earnings continuously fall below the deductible amount for more than 4 weeks, if a salary is paid weekly or 2 months if it is paid monthly.

What if my employee has court orders against them?

Courts can make orders asking you to 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 of Fines
Council Tax Attachment of Earnings Order (CTAEO)
A Student loan repayment

Scotland

Deduction of Earnings Order (DEO) from CMG
Earnings Arrestment (EA)
A Student Loan repayment

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 must not bring the employee below the protected earnings limit of 60% of net earnings.

What if my 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 email overpayments@bromsgroveandredditch.gov.uk

What if my 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 the amount directed by Redditch Borough Council according to table A or B on the DEA request, 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 to discuss this.

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. If there is a change in circumstances which means that you can no longer operate the DEA, you must notify us in writing within 10 days.

What if I have a question that hasn't been answered by this Direct Earnings Attachment Guidance for Employer?

Contact Redditch Borough Council Overpayment Team by email at overpayments@bromsgroveandredditch.gov.uk

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