**An Employers Guide to Direct Earnings Attachment: Collection of Housing Benefit Overpayments.**

# Direct earnings attachment: Introduction

Medway 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 Attachment (DEA).

# Why is the council using a DEA

Not everyone enters into a voluntary repayment agreement. DEAs give us the opportunity to recover overpaid benefit from debtors who are employed if they either refuse to pay, or are unable to agree to an acceptable repayment plan or who have defaulted on a voluntary repayment arrangement.

# 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 starts between 8 April 2013 and 31 March 2014), or a micro business (having fewer than 10 employees). In such circumstances you are not obliged to operate a DEA, although you may do so if this is agreed with your employee. If you fail to comply with your duties, you could be subject, on conviction, to a fine of up to £1000.00.

# 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 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 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 reinstated once a DEA ceases. If after reading through this guidance, you still have unanswered queries, please telephone the council on 01634 332222.

# 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 of the workings of an Attachment of Earnings Order (AEO). A DEA does not replace any of these orders and you may still receive requests to implement deductions for a DEO or AEO for your employees.

# 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 employees 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 Medway Council advises you to stop, or your employee leaves your employment
		- Ensure you take the right amount from your employees earnings each week or month and pay it to us. If you fail to comply with your duties, you could be subject, on conviction, to a fine of up to £1000.00.

# Providing information

1. From Medway Council – we will send you a notice asking you to apply a DEA to your employees earnings. This will include all the information you need to have in order to set up the DEA.
2. To Medway 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 starts between 08 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.
3. 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 01634 332222 if you require any further information or help in operating the DEA.

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

* 1. **The notice from the Council**

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

* + - The name and address 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
		- When to send us payments
		- The address to which you are to send 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.

# The deductions

Once you have received 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.

# 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 us 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.

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

**4**.

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| **What counts as ‘earnings’ for a****DEA?** | **What does not count as ‘earnings’ for DEA** |
| 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 Act1993 |
| Most other payments on top ofwages | Amounts paid by a public department of the Government ofNorthern Ireland or anywhere outside the UK |
| Occupational pensions, if paidwith wages or salary | Sums paid to reimburse expenses wholly and necessarilyincurred in the course of the employment |
| Periodic payments by way of compensation for the loss, abolition or relinquish, or diminution in the emoluments, ofany office or employment | Pay or allowances as a member of Her Majestys Forces, other than pay or allowances payable to them by you as a special member of the reserve force. |
| Statutory sick pay | Lump sum 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 employees net earnings.

# What are net earnings?

You must take the amount for the Direct earnings Attachment directly from your employees 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).

# How do I work out the amount to deduct?

* 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 and B below)
		+ Check that the correct percentage rate has been applied 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.
		+ Work out the employees net earnings (as previously explained in points 3 and 4)
		+ Use table A or B (below) to find the right deduction percentage rate for the employees net earnings.
		+ Apply the percentage figure against the net earnings figure to calculate the amount to be deducted.

# Amounts to be deducted by the employer

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| --- | --- |
| **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 £1160** | **7%** |
| **Exceeding £1160 but not exceeding £1615** | **11%** |
| **Exceeding £1615 but not exceeding £2240** | **15%** |
| **Exceeding £2240** | **20%** |

1. 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.

1. 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 is used to check the percentage rate. NB: Do not leave an employee with less than 60% of their total net earnings.

1. 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. NB: Do not leave an employee with less than 60% of their total net earnings.
2. 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 weeks wage and 2 weeks holiday pay. Total net payment for 3 weeks = £850.

£850 / 3= £283.33

£283.33 x 11% = £31.17

Total deduction from the net wage for 3 weeks of £850.00 = £93.51 (£31.17 x 3)

# Rounding

The exact amount of the net wage is used against table A and 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, as follows:

Net wage £235.63 per week

£235.63 x 7% = £16.4941

Weekly deduction = £16.49

Net wage £1547.99 per month

£1547.99 x 11% = £170.278

Monthly deduction = £170.28

# Administrative costs – what can you charge your employee?

For each pay period when you calculate the DEA deduction, you may also take up £1 from your employees earnings towards administrative costs. You can take this even if it reduces the employees income below the protected proportion. 7

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

* 1. If you fail to take a deduction from the employees 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 that 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.
	1. 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.

Please also 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.

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

* 1. Courts can make orders that mean you must take money directly from your employees 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 and 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 and 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.

# 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 and B on page 7) you cannot calculate a DEA deduction.

You must tell the council why a deduction cannot be made using a Direct Earnings Attachment payments schedule (see section 13.4 for information on this).

# 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 urgently contact the council on the telephone number at the top of the letter they received about the Direct Earnings Attachment. The number is 01634 332222.

# 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 or B (page 7), 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.

# 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 Council on 01634 332222 or email us at overpayments@medway.gov.uk.

# Making payments to Medway 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 employees wages over to Medway Council as soon as possible, but no later than the 19 day of the month following the month in which you have taken it. For example, if you take the money on 30 Sept, you must send it to us before 19 October. If you take the money on 01 Oct, you must send it to us before 19 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:

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| Medway Councils bank sort code | 57-17-50 |
| Medway councils bank account | 00000000 |
| Account name | Medway Council Head Office Collection Account |
| Employees council reference no | This will be found on the DEA |

Please email a remittance to: incomesection@medway.gov.uk