



TRAFFORD
COUNCIL



Direct Earnings Attachments

An Employer's Guide

www.trafford.gov.uk

Please read first - Important Information

On 4 March 2013 the Social Security (Overpayment and Recovery) Regulations 2013 were laid before Parliament effectively allowing the Department for Work and Pensions (DWP) and Councils to introduce Direct Earnings Attachments (DEAs) to recover money owed. These regulations became statute on 8 April 2013.

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 do I calculate the amount to deduct?' (page 9)**
- 2. Manually check if 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 Q&A section 'Employee has other Court Orders against them'. (page 17)**
- 3. In cases where the DEA does take priority over another order, consider if 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 re-instated once a DEA ceases.**

Please contact us by telephone on 0161 912 2223, or by emailing to recovery@trafford.gov.uk if you require any further information or help in operating a DEA.

These guidance notes explain 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, and**
- what your legal responsibilities are.**

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

More detailed guidance about how to operate a DEA (including worked examples) can be found on gov.uk.

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Introduction to Direct Earnings Attachments (DEA)

The Department for Work and Pensions (DWP) and Councils are responsible for recovering money owed to the State as a result of debt arising under the Social Security Administration Act 1992.

The Welfare Reform Act 2012, which became law in March 2012, allows DWP Debt Management and Councils to ask you, as an employer, to make deductions directly from a customer's earnings. We do this by asking you to operate a Direct Earnings Attachment (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 8 April 2013 and the regulations are available on the internet. 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 in some circumstances employers may receive requests to implement deductions for a DEO and a DEA for the same employee.

You may be familiar with a DEO if you have ever been ordered to make deductions from an employee's earnings or pension for the Child Maintenance Group (CMG) previously known as the Child Maintenance and Enforcement Group (CMEC), or the Child Support Agency (CSA), as a way of collecting child maintenance from a non-resident parent.

Your legal responsibilities

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:

- income tax
- Class 1 contributions
- Amounts deductible by way of contributions to a work place pension scheme which provides payment of annuities or lump sums
 1. To the employee on retirement at a specified age or on becoming incapacitated at an earlier age
 2. On the employee's death, to the personal representative, widow, surviving civil partner, relatives or dependants
- make payments 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 the Council advises you to stop or your employee leaves

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

Providing information

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 an existing micro business (having fewer than 10 employees) as at 8th April 2013, as defined in the Regulations. If you are an existing 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 if any of the above applies to you.

You have a duty to notify your employee of:

- the amount of the deduction taken, including any amount taken for administrative costs (see section on administrative costs). If this information is shown on the payslip, it will suffice.
- how the 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.

You should also let us know:

- if your business ceases trading.

If you have any problems or queries in setting up the DEA, please ring us on 0161 912 2223.

How does a DEA operate?

We will send you a letter (notice) which tells you to implement a DEA for one of your employees. This notice will include details which 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.

Exemptions

As an employer you are exempt from operating a DEA where:

- You are an existing (as at 8th April 2013) micro employer (having fewer than 10 employees) as defined in the regulations.
- If your business grows to 10 or more employees you will be entitled to a grace period before we ask you to comply with a DEA. If this happens, please contact us for further information on the number shown on the letter you have received from us.

However, even when an exemption applies you may still make deductions by way of a DEA from salary if this is agreed by both you and your employee.

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 this amount 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 push the overall amount of deductions to over 40%, the DEA deduction must be adjusted to an amount that will leave the employee with 60% of their net earnings.

Therefore, in the circumstance where (even before the consideration of a DEA), because of other orders that are already in place, the employees net wage is already below 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.

Net Earnings

You must take the amount for the DEA directly from your employee's net earnings. (Net earnings are the amounts the employee earns after taking off Income tax, National Insurance and all contributions to a pension, including Additional Voluntary Contributions, Free Standing Additional Voluntary Contributions and Stakeholder Pension Contributions).

The definition of earnings for a DEA

The following table lists:

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

The definition of earnings for DEAs

What counts as “earnings” for DEAs	What does not count as “earnings” for DEAs
Wages	
Salary	Statutory Maternity Pay
Fees	Statutory Adoption Pay
Bonuses	Ordinary Statutory Paternity Pay
Commission	Additional Statutory Paternity Pay
Overtime pay	Any pension, benefit, allowance or credit paid by DWP, a Local Authority or HMRC
Most other payments on top of wages	A guaranteed minimum pension under the Pensions Act 1993
Occupational Pensions (if paid with wages or salary)	Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the United Kingdom
Compensation payments	Sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment
Payment in Lieu of notice	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 Sick Pay	Statutory redundancy payments

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.

How do I calculate the amount to deduct?

- work out the employee's net earnings as defined on page 7 & 8
- refer to your instruction letter which details the tables to use to find the correct deduction percentage rate for the employee's net earnings. The tables are on pages 10 & 11 of this booklet.
- use the percentage figure against the net earnings figure to calculate the amount to be deducted

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.

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 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.
- check that the correct percentage rate has been applied 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 from CMG, or other priority orders are in place, please refer to Q&A section for further information. If you wish to discuss this with us or if you receive a request from CMG after we have asked you to implement a deduction, and you have any questions, please telephone us on **0161 912 2223**.

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 on page 10 & 11) then no DEA deduction can be applied.

Table of amounts to be deducted

Regulation 20 - Schedule 2

Table A: Where earnings are paid weekly

Amount of Net Earnings	Deduction Rate (% of Net Earnings)
(Net Earnings are gross pay, less tax, national insurance and pension contributions)	
£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

Amount of Net Earnings	Deduction Rate (% of Net Earnings)
(Net Earnings are gross pay, less tax, national insurance and pension contributions)	
£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 of amounts to be deducted

Table C: Where earnings are paid weekly

Amount of Net Earnings	Deduction Rate (% 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

Amount of Net Earnings	Deduction Rate (% 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 £1160	14
Exceeding £1160 but not exceeding £1615	22
Exceeding £1615 but not exceeding £2240	30
Exceeding £2240	40

If an employee is paid 2 weekly, the total net wage is divided by 2 and table A or C is used (the instruction letter you have received will indicate which tables to use depending on the frequency of pay) to check the percentage rate.

If an employee is paid 4 weekly, the total net wage is divided by 4 and table A or C is used (the instruction letter you have received will indicate which tables to use depending on the frequency of pay) 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, 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 x 11% = £31.17 (in this example we have used table A, however it is important that you check the instruction letter you have received to confirm which tables to use)

Total deduction from net wage of £850 = £93.51 (£31.17 x 3)

Rounding

The exact amount of the net wage is used against tables on page 10 & 11. 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. This charge is to cover your costs so do not send this administration cost deduction to the Council. 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 is only applied when a DEA deduction is actually made, and cannot be deducted for any pay period when no DEA deduction is made.

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.

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

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 first:

- deduct the amount required for the current pay period
- then reduce the deductions 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 other orders in place will breach the protected earnings limit of 60% (Example 3 on page 14) 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.

Working Examples

In the examples below we have used table A and B. In order to establish which tables you should use please refer to the instruction letter you will have received with this booklet.

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 that already has an existing attachment order for child maintenance deductions. A person with net earnings of £250 per week after 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 totalling £486. 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:

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.

What if my employee does not earn enough for me to make the deduction?

If the weekly or monthly earnings are below the threshold on the table specified in your instruction letter you cannot calculate a DEA deduction.

You must continue to check if a DEA deduction is applicable each pay period until either we tell you to stop or your employee leaves your employment.

How to make payments

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

- 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.
- pay the amount you take from your employee's wages to us 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 30 September 2013, you must send it to us before 19 October 2013; if you take the money on 1 October 2013, you must send it to us before 19 November 2013).
- make regular payments until you calculate the balance is cleared
- or make regular payments to us until informed by us to stop

You can make a payment to us:

- by BACS

Sort code: 20-55-58

Account Number: 13967840

Reference: This will be the employee's account number

- by post

If you need to pay by cheque, make it payable to 'Trafford Council' and write the employee's account number on the back of the cheque. Please send the cheque together with the payment schedule to:

**Trafford Council
PO Box 542
Sale
M33 0GD**

To ensure that payments are allocated correctly you **MUST** send us a Direct Earnings Attachment payments schedule. A copy of this is attached with our notice.

The Direct Earnings Attachment payments schedule must include the following details for each liable person:

- their full name (forenames and surname)
- their National Insurance number
- the amount of the deduction (in pounds sterling), or
- the reason for a nil deduction, if appropriate
- the account number

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.

You can send this schedule in the post to the address detailed above or alternatively email this to remittances@trafford.gov.uk

Please do not send cash through the post.

Questions & Answers

Employee has other court orders against them

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. 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 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 Assessment (CMA)

Student Loans

A student loan repayment is not an order but it does take 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)

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. This number is **0161 912 2223**.

How do I calculate a DEA when the employee is paying back a company loan?

The net earnings used for the purposes of calculating the deduction cannot be reduced by any loan unless that loan was an advance of pay.

How do I calculate a DEA when my employee receives a regular and an irregular salary?

If the employee receives regular and irregular payments and even where they are paid on the same pay date, they should be calculated separately. This may mean calculations could be based on weekly earnings for one payment and monthly earnings for the other.

How do I calculate a DEA when my employee receives an additional payment?

If the employee receives an additional payment, i.e. a bonus or lump sum, this is to be added on to the income for the week or month it was paid if both payments are made on the same payday.

If a bonus is paid outside the tax period, the bonus will be added to the payment made on the following pay day.

How do I calculate a DEA when my employee has more than one job?

If the jobs are identified as separate jobs, and they are paid separately, they are to be calculated separately, even if the employee is employed on the same primary contract.

If the jobs are identified as separate jobs, and they are paid on the same day for the same period, the wages can be added together and calculated as one deduction.

How do I calculate a DEA when my employee is not paid daily, weekly or monthly?

Where earnings from the employer are payable at regular intervals of a whole number of days, weeks or months, the DEA calculation is arrived at by -

- calculating what would be his daily, weekly or monthly net earnings by dividing the net earnings payable to him by that whole number (of days, weeks or months, as the case may be),
- ascertaining the percentage specified in Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) or Table C (if the whole number is a day)
- calculating the sum which equals the appropriate percentage of the notional net earnings for any of those weeks or months and multiplying that sum by the whole number of weeks or months, as appropriate.

I have been exempt from complying with the request to operate a DEA as I had less than 10 employees at the 8th April 2013. However, my business has just expanded (from 26th March 2014) and I now have 20 employees. Does this mean that my exemption has expired?

Yes, you will be granted a six month grace period from the day the business expanded to more than 10 employees. Therefore in this example your exemption will continue up to and including 25th September 2014.

**I have received a letter from the Council 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 7).

I have been applying a fixed rate amount as requested by the Council 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 the Council 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 page 10). The protected earnings rules still apply to a fixed rate deduction (see page 7).

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.

What do I do if I receive a request from the DWP to implement a Direct Earnings Attachment?

The DWP can use the same regulations as the Council to implement a DEA. However, they are different organisations, and should be treated separately. This guidance only relates to Trafford Council DEAs. It is very important that Trafford Council DEA payments are sent to the account number and/ or address detailed in this leaflet, and DWP DEA payments are sent to the account number and/or address provided by the DWP. If you send a Trafford Council DEA payment to the DWP it is your responsibility to ask the DWP to return the money to you, and you must still make a payment to Trafford Council. DWP and Council DEAs are both non-priority orders (see page 17).

SUPPORT FOR YOUR BUSINESS

Trafford Council is committed to helping businesses in Trafford to grow and prosper.

The Economic Growth Team works closely with a range of business support agencies to enable you to access the advice and support you require.

Examples of the support we can provide include:

- Start-up support
- Access to finance and funding opportunities
- Business growth programmes
- Land and property requirements
- Workforce development
- Environmental efficiency

To register for our Business Bulletin and receive information about support and opportunities relevant to your business, please email your details to **business@trafford.gov.uk** or register at **www.trafford.gov.uk/business/signup**



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