

# Housing Benefit

## An Employers Guide to Direct Earnings Attachments for Collecting Housing Benefit Overpayments

### Introduction

From April 2013, we have the power to recover overpaid Housing Benefit by deductions from earnings without applying for a court order. We do this through a Direct Earnings Attachment (DEA).

The legislation giving Local Authorities this power is contained in the Social Security (Overpayments and Recovery) Regulations 2013.

This factsheet 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, and
- What your legal responsibilities are

### Why is the Council using a DEA?

West Somerset Council is responsible for collecting money owed for debts arising under the Social Security Administration Act 1992. Not everyone enters into a voluntary agreement to repay overpaid Housing Benefit. DEAs give us the opportunity to recover these debts from employed people if they:

- refuse to repay
- cannot agree an acceptable repayment plan
- default on a voluntary repayment arrangement.

You have a legal obligation to implement a DEA unless you are a **micro business**.

If you fail to comply with your duties you could be subject, on conviction, to a fine of up to £1,000 (Regulation 30 of the Social Security (Overpayments and Recovery) Regulations 2013).

As a **micro business** you are only exempt if you were in existence before the legislation in April 2013, unless you were a new business before 31 March 2014, in which case you keep the exemption until your company grows as described below:

'Existing micro businesses (those existing before to 8 April 2013) remain exempt until such time as for the majority of a 6 month period they employ 10 or more people. When for the majority of a 6 month period they employ 10 or more people, the exemption will end 6 months from the date that they first had 10 or more employees.'

If you are a new or micro business, you do not have to implement a DEA although you can if you agree to do this with your employee.

**If, after reading through this guidance, you still have unanswered queries, please telephone Customer Services on 01643 703704.**

### Direct Earnings Attachments – background information

A DEA has its own regulations that 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 get requests to implement deductions for a DEO or AEO for your employees.

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.
- Pay us the amounts deducted by the 19<sup>th</sup> day of the month following the month of the deduction.
- Keep a record of each deduction taken and the employee from whose earnings it was made.
- Continue to operate the DEA until West Somerset Council tells you to stop, 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.



## Providing information

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 set up the DEA. You have a duty to tell 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 **micro business** (see explanation on the previous page).

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 stops trading.

You have a duty to write to your employee to tell them:

- The amount of the deduction taken, including any amount taken for administrative costs (see **Administrative Costs**). If this information is shown on their payslip, it will suffice.
- How that deduction was worked out.

You must do this (and record it) no later than the payday after the one on which you take the DEA deduction.

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

We will send you a letter (officially called a notice) that tells you to apply a DEA for your employee and gives you the information you will need. 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 (see the **Protected Earnings Level** section)
- 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.

When you receive the notice, you need to check your employee earns enough to allow a deduction to be made. If they do, work out how much to take from their earnings using the information we provide.

When you have taken the money, you must pay it over to West Somerset Council within the set time. 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 work out and deduct the payment every week, but you can pay us four weekly if you prefer. Please let us know if you will be doing this by telephoning 01643 703704.

## 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.

**NB: Do not leave an employee with less than 60% of their total net earnings.**



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

What counts as 'earnings' for DEAs	What <u>does not</u> count as 'earnings' for DEAs
Wages	Statutory Maternity Pay
Salary	Statutory Adoption Pay
Fees	Ordinary Statutory Paternity Pay
Bonuses	Statutory Shared Parental 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 the 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 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 included as part of the employee's net earnings.

### 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 I 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?

When working out the DEA deduction, you must:

- Ensure your employee has enough net earnings in the pay period for you to calculate a deduction (see tables A & B on the next page).
- Check you have applied the correct percentage rate against those net earnings.
- Check the total of all the deductions do not leave the employee with less than the protected earnings proportion. This is 60% of their total net earnings during the period for which the deduction applies.
- Work out the employee's net earnings
- Use table A or B (on the next page) to find the right deduction percentage rate for the employee's net earnings.
- Apply the percentage figure against the net earnings figure to work out the amount to deduct.

## Amounts to be deducted by the employer

**TABLE A: Where earnings are paid weekly**

Amount of net earnings	Deduction (Per Cent 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%

If an employee is paid 2 weekly, divide the total net wage by 2 and use table A to check the percentage rate.

If an employee is paid 4 weekly, divide the total net wage by 4 and use table A to check the percentage rate.

**TABLE B: Where earnings are paid monthly**

Amount of net earnings	Deduction (Per Cent 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%

### 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. You can take this even if it reduces the employee's income below the protected earnings proportion.

### Rounding

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

- Net wage £235.63 a week
- $£235.63 \times 7\% = £16.4941$
- Weekly deduction = £16.49
- Net wage £1,547.99 a month
- $£1,547.99 \times 11\% = £170.278$
- Monthly deduction = £170.28

### Holiday Pay

If an employee's wages include holiday pay paid in advance, average the net wage and apply the percentage rate to the average figure. For example:

The employee received one week's wage and 2 weeks holiday pay. Total net payment for 3 weeks = £850.

- $£850 \div 3 = £283.33$
- $£283.33 \times 22\% = £62.33$
- Total deduction from the net wage for 3 weeks of £850 = £186.99 ( $£62.33 \times 3$ ).

## What if I 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 you take an incorrect amount, correct it on the next payday or paydays.

If the incorrect amount is because the deduction was less than the amount specified under the regulations you should:

- 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 you should:

- 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% (see the previous page) 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.

**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?

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)
- Student Loan Repayment
- Direct Earnings Attachment from the DWP (DEA - DWP)

### Scotland

- Deduction of Earnings Order (DEO) from CMG
- Conjoined Arrestment Order (CAO)
- Earnings Arrestment (EA)
- Student Loan Repayment
- Current Maintenance Arrestment (CMA)
- Direct Earnings Attachment from the DWP (DEA - DWP)

Where you already have either an EA or CMA in place for an employee and you receive a DEA notice from us, you do not have to apply to the courts for a conjoined order. Applying for a conjoined order only applies where you receive other Scottish orders.

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 apply the deduction?**

If the weekly or monthly earnings are below the threshold (see tables A & B on page 4) you cannot calculate a DEA deduction. You must tell us why you cannot apply a deduction using a Direct Earnings Attachment payments schedule (see below).

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

### **Your employee thinks the amount they owe is wrong.**

If your employee thinks the amount of money they owe is wrong, you should advise them to contact Customer Services on 01643 703704.

### **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 check the amount you are deducting is correct according to table A or B (page 4), based on their earnings and other orders in place. If the amount is correct, explain you have been told to apply the deduction. If they feel this is too much for them to manage, you should tell 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 pay 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 stop or if the amount deducted needs to change.

If there is a change of circumstances that means that you can no longer operate the DEA, you must write to us within 10 days of that change happening. We may be able to speed up the administration process if you firstly telephone us on 01643 703704.

### **Making payments**



On receiving a DEA notice, 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 employee's earnings.
- Pay the amount you have taken from your employee's wages over to West Somerset Council as soon as possible, but no later than the 19<sup>th</sup> day of the month following the month in which you have taken it.  
For example, if you take the money on 30<sup>th</sup> September, you must send it to us before 19<sup>th</sup> October. If you take the money on 1<sup>st</sup> October, you must send it to us before 19<sup>th</sup> November.

### **Direct Earnings Attachment payments schedule**

For payments by BACS (Automated Credit Transfer) or cheque you must send us a Direct Earnings Attachment payments schedule. We have included a blank schedule for you to use. You can copy it as many times as you need.

The Direct Earnings Attachment payments schedule can also be found on our website [www.westsomersetonline.gov.uk](http://www.westsomersetonline.gov.uk) under the Overpayments section.

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 LA Reference 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.

If you prefer, you can e-mail an electronic copy of the schedule to us at: [benefits@westsomerset.gov.uk](mailto:benefits@westsomerset.gov.uk) and the payment can follow. Please include 'DEA notice' in the subject of your e-mail.

## Direct earnings Attachment - Employers 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 micro business?	Yes – telephone us on 01643 703704 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 employees <b>net</b> earnings for DEA purposes	
e.	Do they earn enough to allow deductions to be made?	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?	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 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.	Tell the 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 19 <sup>th</sup> day of the month following the month in which it was made.  If paying by BACS or cheque, send the Council a Direct Earnings Attachment payment schedule with details of the payment.	

### 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 a week will have a deduction of £57.75 a 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 a week with an existing attachment order of £60 a 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 £1,620 a 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 that can be made is £162.

#### Calculation:

- Earnings x 40% = £648 (maximum amount for total deductions)
- Existing priority attachment order in place = £486

## Making payments to West Somerset Council

### By phone

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: 60-14-30

Bank account name: West Somerset Council - Sundry Debtor Account

Account Number: 95319379

Please include your 5 digit number shown on the invoice starting with 5.

### By cheque

If you need to pay by cheque, make it payable to West Somerset Council and write the 5 digit number shown on the invoice starting with 5 on the back of the cheque. Please send the cheque to:

Revenues and Benefits Service, West Somerset House,  
Killick Way, Williton, TAUNTON, TA4 4QA

### 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:

Bank account name: West Somerset Council - Sundry Debtor Account

Bank sort code: 60-14-30

Account number: 95319379

Please include your 5 digit number shown on the invoice starting with 5.

If you are paying by BACS, you need to send a Direct Earnings Attachment payment schedule to us so we know who the payment refers to. Please see information on Direct Earnings Attachment payment schedules earlier in this factsheet.

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

## For more help and advice contact the Revenues and Benefits Service:

**Telephone:** 01643 703704 (lines open Monday -Thursday 8.30am - 5.00pm, Friday 8.30am - 4.30pm)

**Email:** [benefits@westsomerset.gov.uk](mailto:benefits@westsomerset.gov.uk)

**Post:** Revenues and Benefits Service, West Somerset House,  
Killick Way, Williton, TAUNTON, TA4 4QA

**In person:** WILLITON : West Somerset House, Killick Way, Williton, TA4 4QA  
Monday to Thursday 8.30am to 5.00pm, Friday 8.30am to 4.30pm

MINEHEAD: Customer Centre, 1-3 Summerland Avenue, MINEHEAD, TA24 5BP  
Monday to Thursday 9.00am to 12.30pm and 1.30pm - 5.00pm  
Friday 9.00am to 12.30pm and 1.30pm - 4.30pm

**Download:** Forms, factsheets and information from our website at [www.westsomersetonline.gov.uk](http://www.westsomersetonline.gov.uk)



### Independent Advice

The West Somerset Advice Bureau can offer a wide range of advice on benefits.

**Telephone:** 01643 704624

**Website:** [www.westsomersetadvice.org.uk](http://www.westsomersetadvice.org.uk)

### Department for Work and Pensions

**Telephone:** 0845 605 7064

**Website:** [www.gov.uk](http://www.gov.uk)

**If you need this document in another language or format, such as large print, audio cassette or Braille, please call: 01643 703704 or e-mail: [benefits@westsomerset.gov.uk](mailto:benefits@westsomerset.gov.uk)**