

Blaenau Gwent County Borough Council

Direct Earnings Attachments for the Collection of Housing Benefit Overpayments

An Employer's Guide

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What this Guide is about

This guide explains what you, as an employer, need to do if Housing Benefit Overpayment Department asks you to implement a Direct Earnings Attachment (DEA). Where you receive a notice to operate a DEA we ask you to read the information contained in this guide. It provides information on:

- what a DEA is
- how a DEA operates
- how to calculate a DEA
- your responsibilities
- how to make payments to DWP Debt Management.

This guide is intended to help you understand the main points about a DEA. It is not a full description or statement of the law.

Further guidance which includes worked examples can be found in our more detailed guide for employers on GOV.UK.

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Introduction to a Direct Earnings Attachment

The Welfare Reform Act 2012, which became law in March 2012, allows Housing Benefit Overpayment Dept, part of the Blaenau Gwent County Borough Council to ask you as an employer, to make deductions directly from a customer's earnings. We (Housing Benefit Overpayments Dept) 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 for example the Attachment of Earnings Order (AOE) process.

Within the Welfare Reform Act, the legislation covering DEAs, part of the Social Security (Overpayment and Recovery) Regulations 2013, came into force on 8th April 2013 and these regulations are available on the internet. Note that these regulations are only in force in England, Scotland and Wales and so exclude Northern Ireland, Channel Islands and the Isle of Man.

A DEA has its own regulations and operates differently from other orders such as a Deduction from Earnings Order (DEO), AEO and Council Tax Attachment of Earnings Order (CTAEO). A DEA does not replace any of these other orders and in some circumstances employers may receive requests to implement deductions for multiple orders for the same employee.

How does a DEA arise?

Where the Secretary of State has been unable to recover monies owed to Housing Benefit dept from customers not in receipt of a benefit, and who have not voluntarily agreed to repay, those monies may be recovered by deduction from the customer's earnings.

We will send you a formal notice for each qualifying employee asking you to implement a DEA, including basic instructions on how to do this.

We will include the **National Insurance number and an Invoice number** of the employee on all letters sent to you.

It is important that you quote this Invoice number:

- on any correspondence you send to us
- in the payment / payee reference field if you make an online BACS payment for an individual employee
- on the back of a cheque if you make a cheque payment for an individual employee
- if you are making a card payment for one employee

What legal responsibilities and duties does a DEA place on an employer?

You have a legal obligation to:

- calculate a deduction based on the net earnings (see page 7) for each pay date (see pages 8,9 & 10 'How is a DEA calculated?') or
- apply a fixed amount calculated by us if we ask you to do so (see page 9)
- ensure payments to Blaenau Gwent County Borough Council carry the required reference, Housing Benefit Overpayment Dept use the Invoice number, that allows us to allocate to the customers' accounts
- keep a record of each employee from whom a DEA deduction has been made, together with the amount of each deduction

You have a duty to notify the Housing Benefit Overpayment dept in writing or by phone within 10 days of the date of the DEA notice:

- when someone we have asked you to implement a DEA for does not work for you
- when, and the date from which, an employee ceases to be in your employment .

If either of the above applies you will need to notify us in writing at the address shown at the top of the DEA notice letter, or by phone.

You have a duty to your employee to notify them in writing of the amount of the deduction taken, including any amount taken for administrative costs (see section on Administrative Costs, page 13). The above information may be provided on the payslip and must be sent or given to the employee not later than the pay day for the pay period to which the deduction relates or, where this is not possible, not later than the following pay day.

If your employee requests an explanation in writing of how the deduction was calculated, you must provide a written response within 28 days of receiving their request.

If you have any problems or queries relating to the DEA, please ring 01495 353398

Protected and Net Earnings

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 the amount of the DEA 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 increase the overall amount of deductions to more than 40% of the net wage, the DEA deduction must be adjusted to an amount that will leave the employee with 60% of their net earnings. This applies even where we have asked you to apply a fixed rate deduction (see page 9).

Therefore, in the circumstance where (before the consideration of a DEA deduction) other orders are already in place and the employees net wage is already equal to or less than

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. However, you must still check if a deduction applies for the next and every subsequent pay period, and additionally ensure that a schedule is sent to us in respect of this pay period (see page 17), as we will have been expecting to receive a payment.

Net Earnings

For the purposes of calculating a DEA deduction, net earnings means earnings after the deduction of:

- Income Tax
- Class 1 National Insurance and
- Superannuation contributions.

What does count as earnings?

- Wages
- Salary
- Fees
- Bonuses
- Commission
- Overtime pay
- Occupational pensions, if paid with wages or salary

- Compensation payments
- Statutory sick pay
- Payment in lieu of notice
- Most other payments on top of wages

What does not count as earnings?

- Statutory maternity pay
- Statutory adoption pay
- Ordinary statutory paternity pay
- Statutory Shared parental pay
- Any pension, benefit, allowance or credit paid by DWP, a local authority or HMRC
- A guaranteed minimum pension under the Pensions Scheme Act 1993 (b)
- 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
- Statutory Redundancy Payments

You must continue to calculate a DEA deduction every pay day until either one of the following change of circumstances occurs:

- we advise you to stop – **you may receive this request by telephone, which will be confirmed later in writing**
- the employee leaves your employment
- the employee dies and the salary is paid after the date of the employee's death
- the amount to recover is no longer outstanding or
- we ask you to apply a fixed rate deduction (see page 11).

How is a DEA calculated?

There are two deduction percentage rates for calculation – **Standard Rate** and **Higher Rate**. Housing Benefit Overpayment Dept will let you know which of these rates we want you to apply, when we contact you about setting up the DEA. The rate we ask you to apply may change throughout the life of the DEA, from **Standard** to **Higher** and vice versa, and you will be notified of this by letter.

After considering an employee’s protected earnings requirements

1. calculate the employee’s net earnings (see page 7) for the pay period
2. find the correct deduction percentage rate based on:
 - a. the frequency of their pay (apply frequency rate from Table A for Standard Rate (page 9) or Table B for Higher Rate (page 10))
 - b. the net earnings figure
3. multiply the net earnings figure by the percentage rate – **Standard** or **Higher**- to calculate the DEA amount

Note - if you are calculating a DEA based on a daily rate, you must also multiply the daily rate figure by the number of days in the pay period. **(please refer to the guidance Direct Earnings Attachment – A More Detailed Guide at 7.12 a) and b))**

The table below is for calculation of the deduction at the **Standard Rate**

TABLE A: DEDUCTIONS FROM EARNINGS RATE (STANDARD)			DEDUCTIONS RATE TO APPLY (percentage of net earnings)
AMOUNT OF NET EARNINGS (Net earnings are gross pay, less income tax, Class 1 National Insurance and superannuation contributions)			
DAILY EARNINGS	WEEKLY EARNINGS	MONTHLY EARNINGS	
Up to £15.00	Up to £100.00	Up to £430.00	NIL
Between £15.01 and £23.00	Between £100.01 and £160.00	Between £430.01 and £690.00	3
Between £23.01 and £32.00	Between £160.01 and £220.00	Between £690.01 and £950.00	5
Between £32.01 and £39.00	Between £220.01 and £270.00	Between £950.01 and £1160.00	7
Between £39.01 and £54.00	Between £270.01 and £375.00	Between £1160.01 and £1615.00	11
Between £54.01 and £75.00	Between £375.01 and £520.00	Between £1615.01 and £2240.00	15
£75.01 or more	£520.01 or more	£2240.01 or more	20

The table below is for calculation of the deduction at the **Higher Rate**

TABLE A: DEDUCTIONS FROM EARNINGS RATE (Higher)			DEDUCTIONS RATE TO APPLY (percentage of net earnings)
AMOUNT OF NET EARNINGS (Net earnings are gross pay, less income tax, Class 1 National Insurance and superannuation contributions)			
DAILY EARNINGS	WEEKLY EARNINGS	MONTHLY EARNINGS	
Up to £15.00	Up to £100.00	Up to £430.00	5
Between £15.01 and £23.00	Between £100.01 and £160.00	Between £430.01 and £690.00	6
Between £23.01 and £32.00	Between £160.01 and £220.00	Between £690.01 and £950.00	10
Between £32.01 and £39.00	Between £220.01 and £270.00	Between £950.01 and £1160.00	14
Between £39.01 and £54.00	Between £270.01 and £375.00	Between £1160.01 and £1615.00	22
Between £54.01 and £75.00	Between £375.01 and £520.00	Between £1615.01 and £2240.00	30
£75.01 or more	£520.01 or more	£2240.01 or more	40

Housing Benefit Overpayment Debt will notify you which rate – **Standard** or **Higher** – you must apply to the DEA for an individual employee. The rate we ask you to apply may change throughout the life of the DEA, from **Standard** to **Higher** and vice versa, and you will be notified of this by letter. If you need to confirm with us that you are deducting at the correct rate, you can do this by phone.

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 A and B above) then no DEA deduction can be applied.

You must always ensure that the Protected Earnings Rate is taken into account, including when we have asked you to apply a fixed rate deduction

Other Orders and Priorities

After calculating the DEA amount, you must consider:

- other priority orders in place and
- the protected earnings amount (see page 6)

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 you should take first.

If your employee has one or more of the following in place, or they are received after a DEA notice has been received, these will take priority over a DEA (and are known as priority orders):

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 Arrestment (CMA)

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 over any other orders, known as non-priority orders or notices (such as Local Authority Housing Benefit DEAs), in date order (see below).

The order of non-priority orders will be decided by the date of the notice. For Scottish orders this will be decided by the date they were received.

Student Loans

A student loan is not an order but if it is being recovered, it is treated in exactly the same way as a priority order. This applies in both England & Wales and Scotland.

If you have any further enquiries on orders or priorities, please contact us using the telephone number 01495 355838.

First DEA deduction (payday)

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. As an example, if a notice is issued on 2nd September 2015; the first pay date would be on or after the 24th September 2015.

Payments to Housing Benefit Overpayment dept need to be made in line with your payroll and at least on a monthly basis. If your employee is paid monthly or four weekly, payments must match this cycle. If your employee is paid weekly, payments may be made either weekly as the deduction is taken or on a per month basis.

Administrative costs

For each pay period where a calculation results in a DEA deduction, you may take up to £1.00* from your employee's earnings towards your administrative costs. This charge is to cover your costs so do not send this administration cost deduction to Housing Benefit Overpayment Dept. 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-minimumwage>, 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 £1.00 is only applied when a DEA deduction is actually made, and cannot be deducted for any pay period when no DEA deduction is made.

Responsibilities

Employer

It is **your responsibility** to ensure you calculate the deduction correctly from your employee's net earnings each pay period and pay that amount 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 on page 9)

- check that the correct percentage rate **Standard** or **Higher** has been applied against those net earnings

check that the total of all deductions does not exceed 40% and therefore leave the employee with less than the **protected earnings amount** which is **60% of their total net earnings during the calculating period to which the deduction relates**

(see page 6).

Housing Benefit Overpayment Dept has a legal requirement to issue a DEA (letter to employer to implement DEA) to the employer address provided by HMRC. Even though you may have contracted a payroll provider to undertake your payroll activities associated with DEA, it is your responsibility to ensure the DEA is forwarded to the payroll provider. Do not ask Housing Benefit Overpayment Dept to amend your employer address as provided by HMRC to direct the DEA to your payroll provider.

Housing Benefit Overpayment Dept

It is our responsibility to :

- contact you if you fail to make a payment to us when it is due
- contact you to verify payment information, if applicable
- refund monies directly to an employee when the balance of the debt has been reduced to zero but a further payment has been received from an employer
- return monies to an employer where, under the regulations, no DEA payment should have been made, for example:
 1. a payment made to us in error as the earnings for that pay period were under the earnings threshold and no DEA deduction should therefore have been made
 2. a payment made to us in error because other deductions were already 40% or greater of net earnings for that pay period, and therefore no DEA deduction should have been made

In either of these circumstances you should contact us on (01495 353398) for information on how these monies can be returned to you.

Housing Benefit Overpayment Dept is not able to:

- return monies to an employer where a DEA payment was applicable, but was calculated at an incorrect rate, for example:
 1. where we have received a payment greater than the one which should have been calculated for a specific pay period

In this case, and from the following pay period(s), you should reduce the amount to be deducted by the excess previously taken.

For example, an employer sends a payment for £100 when only £80 was due. At the next pay period the amount of the DEA to be deducted should be reduced by £20.

- trace and return monies to an employer, where:
 1. the employer has sent a payment meant for us to another department or account

In this case you should still make a payment to us but additionally make contact with the other department in order to recover the money you incorrectly paid.

Making payments to Housing Benefit Overpayment Dept

You are required to pay the amount you have calculated and deducted from your employees net wages to the Housing Benefit Overpayment dept as soon as possible. Ideally this will be at the same time as you make the deduction(s) from your employee's salary.

Housing Benefit Overpayment dept offer several Method of Payment options to employers, these are summarised within the process map on page 16. These options are explained in detail on pages 17 - 21 to ensure that payments sent to Housing Benefit Overpayment dept contain the relevant information to allow them to be allocated correctly to the employees account.

Note – Under no circumstances should you send us a cash payment.

Methods of payment – process map

Making one payment for one employee –

- **BACS ACTIONS**

This is our preferred method of payment, because its security and quick clearance times. When setting up a Bank Transfer (BACs), please make sure that the information is set out as shown as below:

Name of account : Blaenau Gwent County Borough Council

Sort code: 20-56-64

Account Number: 60363324

Reference: This will be the employee's **INVOICE NUMBER**

- **CHEQUE ACTIONS**

Make cheque payable to Blaenau Gwent County Borough Council, Write employee's **Invoice number** on reverse of cheque Send cheque and schedule listing employee's **Invoice number** to: Housing Benefit Overpayment Dept, Blaenau Gwent County Borough Council, Civic Centre, Ebbw Vale, NP23 6XB

- **CARD ACTIONS**

Ring 01495 353398 to pay by debit card Give card details and employee's **Invoice number** Do not send a schedule

Making one consolidated payment for many employees –

- **BACS ACTIONS**

Name of account : Blaenau Gwent County Borough Council

Sort code: 20-56-64

Account Number: 60363324

Enter **DEA** in payment/ payee reference field.

Send a schedule listing all employee's Invoice Numbers (which the payment relates) to: Housing Benefit Overpayment dept, Blaenau Gwent County Borough Council, Civic Centre, Ebbw Vale, NP23 6XB

- **CHEQUE ACTIONS**

Make cheque payable to **Blaenau Gwent County Borough Council** Write DEA on reverse of cheque Send cheque and schedule listing all employees' **Invoice Number** (to which the payment relates) to: Housing Benefit Overpayment dept, Blaenau Gwent County Borough Council, Civic Centre, Ebbw Vale, NP23 6XB

Questions & Answers

Where do I find more detailed guidance and worked examples (for example, irregular pay, holiday pay, multiple jobs etc.) on how to calculate a DEA deduction?

More detailed guidance about how to operate a DEA (including worked examples) can be found in our more detailed guide for employers on **GOV.UK**.

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 or Table B) you cannot make a DEA deduction, **but you must either send us a schedule or contact us via the employers helpline to inform us of this.**

You must continue to check if a DEA deduction is applicable each pay period until we tell you to stop, the amount to recover is no longer outstanding or your employee leaves your employment.

I have received a letter from the Housing Benefit Overpayment Dept 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 Table or Table B).

I have been applying a fixed rate amount as requested by Housing Benefit Overpayment Dept 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 HBOPD 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 Table A or Table B). The protected earnings rules still apply to a fixed rate deduction.

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.

I send payments to other departments, for example the Child Maintenance Group. Can I use either of their accounts to send DEA deduction payments?

No. Only use the account details provided in this guide or as shown on the DEA schedule when you make a DEA payment to us. The departments work separately and collect the payments for different reasons. Please note that if you send a payment to another department in error it will be your responsibility to contact the other department and to recover the money.

What if the 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. Please do not provide your employee with the Employer helpline number, as use of this number by an employee will cause a hand-off delay when they contact HBOPD to resolve their query.

What if the employee thinks the amount I have calculated is too much?

If they think that the amount you have calculated is too much, you should first check that the amount you have calculated following the instructions in this guide is correct. If it is correct, you should explain to the employee 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 telephone on the number at the top of the letter they received about the Direct Earnings Attachment.

Comments about our Service

We hope that the information in this leaflet is helpful, and that when contacting the helpline, the service received is informative, courteous and professional. We welcome your feedback regarding our service. If you have any comments, please contact us on 01495 353398 or write to us at the address at the top of the DEA letter.