

Scottish Borders Council

Direct Earnings Attachment

A Guide for Employers

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1. What is the guide about?

1.1 This guide explains what you, as an employer, need to do if Scottish Borders 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:

- How a DEA operates
- Your responsibilities
- How to calculate a DEA
- How to make payments to Scottish Borders Council.

1.2 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.

1.3 Further guidance which includes worked examples can be found online at www.gov.uk

2. Introduction

2.1 Scottish Borders Council is responsible for recovering money owed to them as a result of overpaid Housing Benefit arising under the Social Security Administration Act 1992.

2.2 Where the Local Authority administering the Housing Benefit have been unable to recover money owed to them by customer, that money may be recovered by deduction from the customer's earnings.

2.3 The Welfare Reform Act 2012, which became law in March 2012, allows Scottish Borders Council 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 for example the Attachment of Earnings Order process.

2.4 Within the Welfare Reform Act, the legislation covering DEA's, part of the Social Security (Overpayment and Recovery) Regulations 2013, came into force on 8th April 2013 and these regulations are available at www.legislation.gov.uk/uksi/2013/384.

2.5 A DEA has its own regulations and operates differently from other orders such as a Deduction from Earnings Order, Attachment of Earnings Order and Council Tax Attachment of Earnings Order. A Direct Earnings Attachment 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.

3. Your responsibilities as an employer

3.1 As an employer, you have a **legal** obligation to:

3.1.1 Implement a DEA when we ask you to, by making deductions from the employee's net earnings, i.e. after deduction of:

- Income tax
- Class 1 National Insurance contributions
- Amounts deductible by way of contributions to a work place pension scheme which provides payment of annuities or lump sums to the employee on retirement at a specified age or on becoming incapacitated at an earlier age on the employees death, to the personal representative, widow, surviving civil partner, relatives or dependants

3.1.2 Pay us the amounts deducted (other than your administrative costs) by the 19th day of the month following the month in which the deduction is made.

3.1.3 Make sure when making the payments to us that you use the individual invoice number given to you.

3.1.4 Keep a record of each deduction taken, and the employee from whose earnings it was made Continue to operate the DEA until Scottish Borders Council advise you to stop or your employee leaves.

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

3.3 **You have a duty to notify Scottish Borders Council in writing 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 an employee ceases to be in your employment and the date in which this will take place.

3.4 **You have a duty to your employee to notify your employee in writing of:**

- the amount of the deduction taken, including any amount taken for administrative costs
- how the deduction amount was calculated

3.5 The above information may be provided on the payslip for the pay period to which the deduction relates. Ensure you advise your employee that deductions will be made from their wages/salary and paid to Scottish Borders Council in advance of the payday when the first deduction will be made.

3.6 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;
- 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.

- 3.7 For each pay period you calculate a 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. (See Section 5)

4. Exemptions

- 4.1 The legislation states that it does not impose any obligation on an employer who is carrying on a business which is:

- a new business that has been operating for less than 12 months; or
- an existing micro-business

- 4.2 In some cases where the business may be classed as a micro business consisting of less than 10 employees then exemptions to administering the deductions may be applied. More information on whether your business may be eligible to the exemption can be found in Part 6.18 of the www.legislation.gov.uk/uksi/2013/384.

5 Protected and NET earnings

Protected

- 5.1 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 the total amount deducted from all deduction orders does not leave the employee with less than 60% of their usual NET earnings.
- 5.2 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.
- 5.3 Therefore, in the circumstance where 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 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.

Net earnings

- 5.4 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 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

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

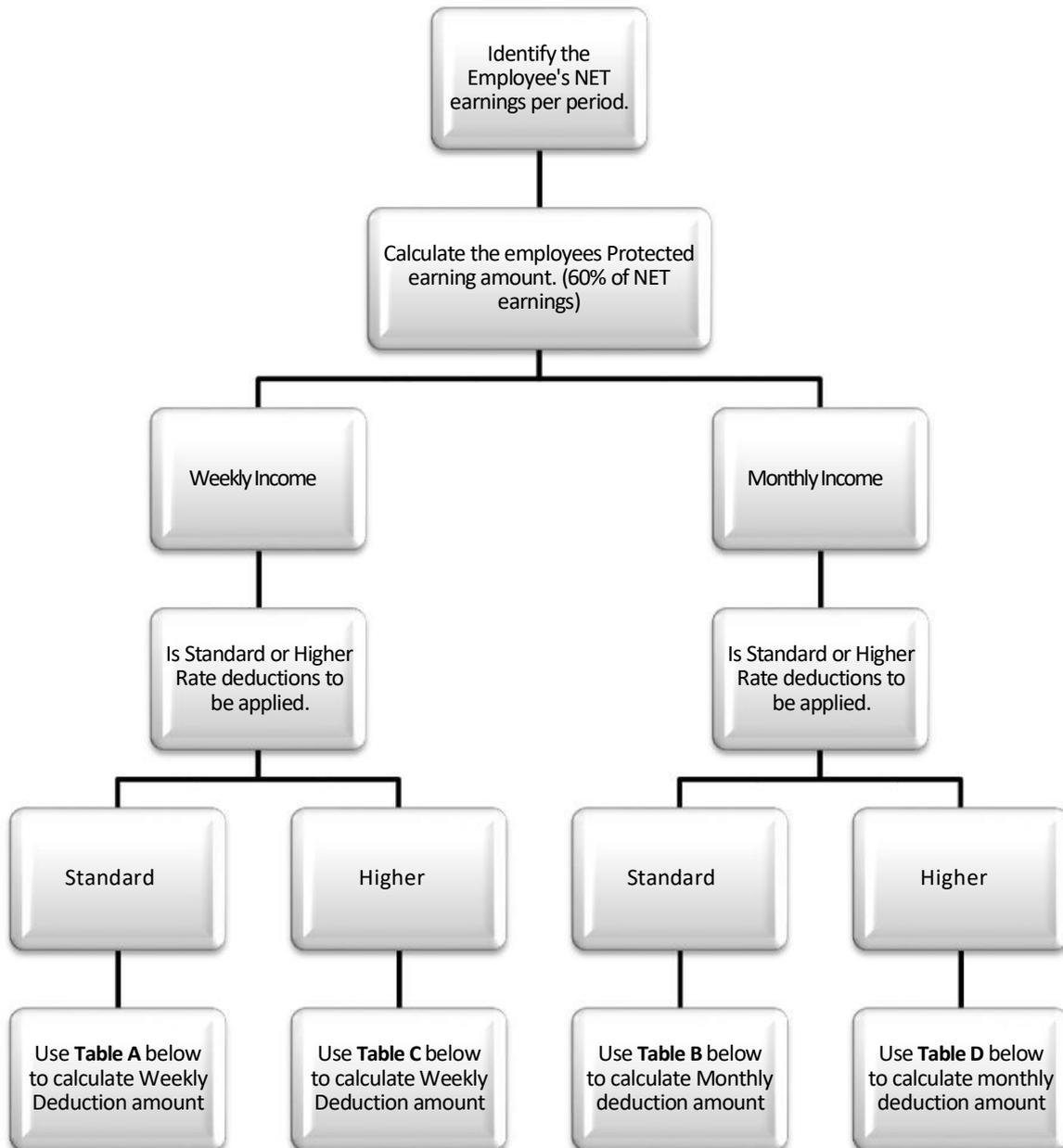
6 How is DEA calculated

- 6.1 There are two deduction percentage rates for calculations – **Standard Rate** and **Higher Rate**. Scottish Borders Council will let you know which of these rates we want you to apply when we contact you. 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.
- 6.2 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:

Example 1
Net wage £235.63 per week
 $£235.63 \times 7\% = £16.4941$
Weekly deduction = £16.49

Example 2
Net wage £1547.99 per month
 $£1547.99 \times 11\% = £170.278$
Monthly deduction - £170.28

7 Process for calculating DEA amount



8 Deduction calculation tables

Table A Standard weekly rates for calculations.

AMOUNT OF NET EARNINGS (Employee Earns per Week)	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 Standard Monthly rates for calculations.

AMOUNT OF NET EARNINGS (Employee Earns Per month)	DEDUCTION (% OF NET EARNINGS)
Less than £430	Nil
Exceeding £430 but not exceeding £690	3%
Exceeding £690 but not exceeding £950	5%
Exceeding £950 but not exceeding £1,160	7%
Exceeding £1,160 but not exceeding £1,615	11%
Exceeding £1,615 but not exceeding £2,240	15%
Exceeding £2,240	20%

Table C Higher weekly rate calculation.

AMOUNT OF NET EARNINGS (Employee Earns Per week)	DEDUCTION (% OF NET EARNINGS)
Up to £100	5%
Between £100.01 and £160	6%
Between £160.01 and £220	10%
Between £220.01 and £270	14%
Between £270.01 and £375	22%
Between £375.01 and £520	30%
£520.01 and more	40%

Table D Higher Monthly rate calculation.

AMOUNT OF NET EARNINGS (Employee Earns Per week)	DEDUCTION (% OF NET EARNINGS)
Up to £430	5%
Between £430.01 and £690	6%
Between £690.01 and £950	10%
Between £950.01 and £1160	14%
Between £1160.01 and £1615	22%
Between £1615.01 and £2240	30%
2240.01 and more	40%

9 Deduction Priorities

- 9.1 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.
- 9.2 If your employee has one or more of the following in place, these will take priority over a DEA:
- Deduction of Earnings Order (DEO) from CMG
 - Conjoined Arrestment Order (CAO)
 - Earnings Arrestment (EA)
 - Current Maintenance Arrestment (CMA)
 - Student Loan Payments
- 9.3 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.

10 How to make a payment to Scottish Borders Council

THE INVOICE NUMBER MUST BE QUOTED WITH ALL PAYMENTS (This will be at the top of the Direct Earning Attachment letter issued to you by Scottish Borders Council.)

Automated Banking Services/BACs

Pay direct to the following account:

Bank: Royal Bank of Scotland
Sort Code: 83-26-34
Account Number: 00601166
Payee: Scottish Borders Council
Reference: See DEA letter

Pay Online at: www.scotborders.gov.uk/pay quoting the Invoice Number.

By Cheque: Cheque's and postal orders should be made payable to 'Scottish Borders Council' and crossed "Not Negotiable - A/C Payee Only". Please write your name, address and invoice number on the back of your cheque or postal order and send it to:

Scottish Borders Council
Customer Advice & Support
Newtown St. Boswells
Melrose
TD6 OYB

By Phone: Call 0300 100 1800 quoting the Invoice Number.

Any Remittance Advice slips should be e-mailed to CSBusinessSupport@scotborders.gov.uk

If you have any problems or queries relating to the DEA, please ring Customer Advice & Support Services on 0300 100 1800.