

# FAREHAM

## BOROUGH COUNCIL

### **An Employer's guide to Direct Earnings Attachments for the collection of Housing Benefit overpayments**

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## **1. Direct Earnings Attachment – Introduction**

Fareham Borough 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 (or DEA).

Local Authorities were given this power by The Social Security (Overpayments and Recovery) Regulations 2013. The full regulations can be found at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### **1.1 Why is the Council using a DEA?**

Not everyone enters into a voluntary repayment agreement. DEAs gives the Council the opportunity to recover overpaid benefits from debtors who are employed if they either refuse to repay, are unable to agree an acceptable repayment plan or who have defaulted on a voluntary repayment agreement.

### **1.2 Do employers have to implement a DEA for the Council?**

Yes, you have a legal obligation to do so unless you are a micro business (having fewer than 10 employees). In such cases 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.

### 1.3 What if my payroll software has not been updated to allow for DEAs?

As this is a relatively 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. Until your software is changed, you will 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 up a DEA you will need to:

- a) 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?”
- b) 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 may impact on a DEA in the section “Employee has other Court Orders against them”.
- c) In cases where the DEA does take priority over another order, please consider whether other orders need to cease or deduction amounts be recalculated.
- d) 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 and you still have unanswered queries, please telephone the **Benefits Overpayment Recovery Team on 01329 824408**.

## 2. Direct Earnings Attachments – background information

A DEA has its own regulations which follow some of the workings of a Deduction from Earnings (DEO) and some of the workings of an Attachment of Earnings Order (AEO). A DEA does not replace any of these other orders and you may still receive requests to implement deductions for a DEO or AEO for your employees.

### 2.1 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 employee's net earnings.
- Make payments of the amounts deducted to us by the 19<sup>th</sup> day of the month following the month the deduction was made.
- Keep a record of each deduction taken and the employee from whose earnings it was made.
- Continue to operate the DEA until Fareham Borough Council advises you to stop, or if your employee leaves your employment.
- Ensure you take the right amount from your employee's earnings and pay it to us.

If you fail to comply with your duties, you could be subject to, on conviction, a fine of up to £1000.

### 2.2 Dealing with information

- a) From Fareham Borough Council – 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 have in order to set up the DEA.
- b) To Fareham Borough 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 micro business (having fewer than 10 employees), as defined in the Regulations. If you are a 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 the letter if any of the above applies to you. You should also let us know if your business ceases trading.

- c) **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 this will suffice.
  - How that deduction was calculated

You must do this (and record it) no later than the payday after the deduction for the DEA was taken.

Please contact the **Benefits Overpayment Recovery Team** on 01329 824408 if you require any further information or help in operating this DEA.

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

#### **3.1 The notice from the Council**

The Council will send you a letter (officially called 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, address and national insurance number of the employee from whose wages you will make the deduction.
- If the Council has it, the employee's staff number, payroll number or similar identifying number.
- The percentage rates at which deductions are to be made.
- The proportion of the employee's wages which are protected (see section 6.2(a))
- When to send payments to the Council
- 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.

#### **3.2 The deductions**

Once you receive the notice, you will need to check that your employee earns enough to allow a deduction to be made. If they do, you will then need to calculate how much to take from their earnings using the information provided by the Council and make the deductions.

#### **3.3 The payments to the Council**

Once you have taken the money, you must pay it to the Council within set time limits. The Council will ask you to make payments in line with your payroll, so if your employee is paid weekly or monthly, you should pay the Council in accordance with this.

However, if your employee is paid weekly you must still calculate and deduct the payment every week but you may pay the Council monthly or 4 weekly if you prefer. Please let us know if you will be doing this by telephoning us on 01329 824408.

It is your responsibility to ensure you take the right amount from your employee's earnings and pay it to us.

#### 4. What payments are calculated as earnings for the purposes of a DEA?

What does count 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	Additional Statutory Paternity Pay
Commission	Any pension, benefit, allowance or credit paid by DWP, 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 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	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 earnings, they are not to be included as part of the employee's net earnings.

#### 5. 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 deductions 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).

## 6. How do I work out the amount to deduct?

### 6.1 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 & 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 employee's 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 employee's net earnings.
- Apply the percentage figure against the net earnings figure to calculate the amount to be deducted.

### 6.2 Amounts to be deducted by the employer

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

<b>Amount of net earnings</b>	<b>Deduction (Per Cent of net earnings)</b>
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**

<b>Amount of net earnings</b>	<b>Deduction (Per Cent of net earnings)</b>
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%

**a) 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.

**b) Employees who are paid every two 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.

**c) Employees who are paid every 4 weeks**

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

**d) 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 week's wage and 2 weeks holiday pay.  
Total net payment for 3 weeks is £850.*

- *£850 divided by 3 = £283.33*
- *£283.33 x 11% = £31.17*
- *Total deduction from the net wage for 3 weeks of £850 = £93.51 (£31.17 x 3)*

#### **e) Rounding**

The exact amount of the net wage is used against Tables A & B. If the percentage amount calculated results in a fraction of a penny, it is rounded to the nearest whole penny, with the 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 x 7% = £16.4941*
- *Weekly deduction = £16.49*
- *Net wage £1547.99 per month*
- *£1547.99 x 11% = £170.278*
- *Monthly deduction = £170.28*

#### **f) Administrative costs – what you can charge your employee**

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.

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

**7.1** If you fail to take a deduction from the employee's 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 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 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.

**7.2** 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.

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

**8.1** 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. 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 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:

### **8.2 England & Wales**

- Deduction from Earnings Order (DEO) from the Child Maintenance Group (CMG)
- Attachment of Earnings Order (AOE) for Maintenance or Fines
- Council Tax Attachment of Earnings Order (CTAOE)

### **8.3 Scotland**

- Deduction from Earnings Order (DEO) from the Child Maintenance Group (CMG)
- Earnings Arrestment

### **8.4 Student Loans**

A student loan repayment also takes priority over a DEA. This applies to 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.

## **9. What if my employee does not earn enough for me to make a deduction?**

If the earnings are below the threshold (see Tables A & B on page 7/8) you cannot calculate a DEA deduction.

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

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

## **10. 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 Overpayment Recovery Team on 01329 824408.

## **11. 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 7/8), 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 this is too much for them to manage, you should advise them to contact the Overpayment Recovery Team on 01329 824408.

## **12. What happens once I am operating a Direct Earnings Attachment**

Once you have started operating a DEA, you must continue to make payments to the Council until we tell you to stop or you have deducted the maximum amount that needs to be recovered from the earnings. The Council will contact you when deductions are to cease or if the amount deducted should change.

If there is a change of circumstances which means you can no longer operate the DEA, please telephone the Overpayment Recovery Team on 01329 824408 or email [benefits@fareham.gov.uk](mailto:benefits@fareham.gov.uk)

## **13. Making payments to Fareham Borough Council**

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

- Make regular payments until the Council tells 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 employee's wages over to the Council as soon as possible and 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 the 19<sup>th</sup> October. If you take it on 1<sup>st</sup> October, you must send it to us by 19<sup>th</sup> November.

### 13.1 By BACS (Automated Credit Transfer)

This is the 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:

Fareham Borough Council's bank sort code	52-41-32
Fareham Borough Council's bank account number	07020066
Account Name	Fareham Borough Council B/P A/C
Employee's LA reference number *	This will be shown on the DEA notice you will be sent
<b>*If the payment is for one employee, enter the employee's LA reference number. If the payment covers multiple employees, Enter DEA</b>	

If you are paying by BACS, you will need to send a Direct Earnings Attachment payment schedule to us so we know who the payment refers to. Please see point 13.4 for instructions about this.

### 13.2 Paying by cheque

If you need to pay by cheque, please make it payable to **Fareham Borough Council** and write the employee's LA reference number on the back of the cheque.

Please send the cheque to:

**Fareham Borough Council  
Civic Offices  
Civic Way  
Fareham  
PO16 7AZ**

If you are paying by cheque, you will need to attach a Direct Earnings Attachment payment schedule to the cheque so we know who the payment refers to. Please see point 13.4 for instructions about this.

### 13.3 Paying by telephone

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 are:

**Sort code:** 52-41-32

**Account Number:** 07020066

**Reference:** This will be the employee's LA Reference Number as shown on the DEA notice

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

For payments by BACS (Automated Credit Transfer) or cheque you must send us a Direct Earnings Attachment Earnings payment schedule. A blank schedule for you to use and copy as many times as you need has been included in this document (see page 16) and can also be found on our web page [www.fareham.gov.uk/benefits/overpayments](http://www.fareham.gov.uk/benefits/overpayments)

The Direct Earnings Attachment Earnings 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 Earnings payments schedule. Please do not send cash through the post.

### **13.5 Emailing the Direct Earnings Attachment Earnings payments schedule to the Council**

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

## **14. Examples of Direct Earnings Attachments in practice**

**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 A at 15%).

**Example 2** – A weekly paid earner with an existing attachment order for child maintenance

A person with net earnings of £250 per week with an existing attachment order of £60 per week for child maintenance will have a deduction of £17.50 (in accordance with deduction Table A at 7%).

**Example 3** – A monthly paid earner with existing priority attachment orders

A person with net earnings of £1620 per month should have a DEA of £243 (in accordance with deduction Table B at 15%). However, this deduction in addition to 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 £1620 x 40% = £648 (maximum amount for total deductions). Existing priority attachment order in place = £486*

*DEA deduction = £243*

*£648 - £486 = £162 (maximum amount available for DEA deduction).*

*Therefore, although the deduction rates table states that a deduction of £243 should be taken, the protected earnings limit means that the deduction will be restricted to £162.*

**15. Where can I get more information and advice?**

If you need more information or help to operate a Direct Earnings Attachment, please telephone the Benefit Overpayment Recovery Team on 01329 824408.

## 16. Direct Earnings Attachment – Employer’s 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 - contact the Council within 10 days 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 employee's <b>net</b> earnings for DEA purposes (see point 5)	
e	Do they earn enough to allow deductions to be made? (see point 6)	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)	
g	If you deduct that amount, will they be left with less than 60% of their wages - the protected amount? (see point 6.2a)	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	Notify your 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 19th of the month following the month in which the deduction was made. If paying by BACS or CHEQUE, send the Council a Direct Earnings Attachment payment schedule with details of the payment (see point 13)	



### Fareham Borough Council – Direct Earnings Attachment Payments Schedule

<b>To: Fareham Borough Council</b>	<b>From Employer:</b>
Civic Offices Civic Way Fareham PO16 7AZ	

#### Information about employees who have had DEA deductions made from their earnings

Item	Amount Deducted	Employee's Name	Staff/Reference number	National Insurance Number	LA Reference Number
1	£				
2	£				
3	£				
4	£				
5	£				
<b>If a deduction cannot be made, please state why</b>					

#### Information about the employer and the payment

<b>The total payment covered by this sheet</b>	£	<b>Cheque number</b>	
<b>Who completed this sheet</b>		<b>Payment method (delete as applicable)</b>	<b>BACS/Cheque</b>
<b>Contact phone number</b>		<b>Date sheet completed</b>	

This schedule must be completed whenever you send a payment for one or multiple employees, pay by cheque or BACS (Automated Credit Transfer). If you prefer, you can email an electronic copy to [benefits@fareham.gov.uk](mailto:benefits@fareham.gov.uk) and the payment can follow. Please include "DEA Notice" in the subject of your email.