



Direct Earnings Attachment

A Guide for Employers

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What this Guide is about

This guide explains what you, as an employer, need to do if North Lanarkshire Council 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 North Lanarkshire Council

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.

The DWP provide further guidance for employers on [GOV.UK - Direct Earnings Attachment - A More Detailed Guide](https://www.gov.uk/guidance/direct-earnings-attachment-a-more-detailed-guide), which includes worked examples. Please note that as the calculations are examples, the personal information contained in the calculations is not factual and has been created for the purpose of providing examples.

Contents

Descriptor	Page No
Introduction to Direct Earnings Attachments	4
How does a DEA arise?	4
What legal responsibilities and duties does a DEA place on an employer?	4-5
Protected and Net Earnings	5-6
How is a DEA calculated? (includes deductions rates table)	6-8
Fixed rate deductions	8
Other Orders and Priorities	8-9
First DEA deduction (pay day)	9
Administrative costs	9-10
Responsibilities – as an employer and North Lanarkshire Council	10-11
Making Payments to North Lanarkshire Council	11
Where can I get more information?	12
Frequently asked questions and answers	12-13

Introduction to a Direct Earnings Attachment

The **Welfare Reform Act 2012**, which became law in March 2012, allows North Lanarkshire council to ask you as an employer, to make deductions directly from a customer's earnings. We (North Lanarkshire Council) 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, the **Social Security (Overpayment and Recovery) Regulations 2013**, came into force on 8th April 2013 and these regulations are available to view 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 North Lanarkshire Council has been unable to recover monies owed to them 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 corresponding Invoice Number of the employee on all Departmental letters sent to you.

It is important that you quote the invoice reference 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
- 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 pages 5, 6) 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 8)
- 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
- ensure payments to North Lanarkshire council carry the required invoice reference which will be quoted on all departmental correspondence
- keep a record of each employee from whom a DEA deduction has been made, together with the amount of each deduction

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

You have a duty to notify North Lanarkshire Council 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, pages 9 &10).

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 call us on 01698 403212 opt 2 or email benefitoverpayments@northlan.gov.uk

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 8).

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, 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 page8).

How is a DEA calculated?

There are two deduction percentage rates for calculation – **Standard Rate** and **Higher Rate**.

North Lanarkshire Council 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

- i. Calculate the employee's net earnings (see page 5) for the pay period
- ii. Find the correct deduction percentage rate based on:

a) the frequency of their pay (apply frequency rate from Table A for Standard Rate (page 7) or Table B for Higher Rate (page 8))

b) the net earnings figure

iii. 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.

The DWP provide further guidance for employers on GOV.UK - Direct Earnings Attachment - A More Detailed Guide, which includes worked examples. Please note that as the calculations are examples, the personal information contained in the calculations is not factual and has been created for the purpose of providing examples.

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

TABLE A: DEDUCTIONS FROM EARNINGS RATE (Standard)			
AMOUNT OF NET EARNINGS (Net earnings are gross pay, less income tax, class 1 National Insurance and superannuation contributions)			DEDUCTIONS RATE TO APPLY (Percentage of net earnings)
Daily Earnings	Weekly Earnings	Monthly Earnings	
Up to £15	Up to £100	Up to £430	Nil
Between £15.01 and £23	Between £100.01 and £160	Between £430.01 and £690	3
Between £23.01 and £32	Between £160.01 and £220	Between £690.01 and £950	5
Between £32.01 and £39	Between £220.01 and £270	Between £950.01 and £1160	7
Between £39.01 and £54	Between £270.01 and £375	Between £1160.01 and £1615	11
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	15
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	20

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

TABLE A: DEDUCTIONS FROM EARNINGS RATE (Higher)			
AMOUNT OF NET EARNINGS (Net earnings are gross pay, less income tax, class 1 National Insurance and superannuation contributions)			DEDUCTIONS RATE TO APPLY (Percentage of net earnings)
Daily Earnings	Weekly Earnings	Monthly Earnings	
Up to £15	Up to £100	Up to £430	5
Between £15.01 and £23	Between £100.01 and £160	Between £430.01 and £690	6
Between £23.01 and £32	Between £160.01 and £220	Between £690.01 and £950	10
Between £32.01 and £39	Between £220.01 and £270	Between £950.01 and £1160	14
Between £39.01 and £54	Between £270.01 and £375	Between £1160.01 and £1615	22
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	30
Between £54.01 and £75	Between £375.01 and £520	Between £1615.01 and £2240	40

North Lanarkshire Council 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 5,6)

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 Child Maintenance Group (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, 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.

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 North Lanarkshire Council 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. Regardless of the payment cycle, remittance to North Lanarkshire Council must be made by the 19th of the month following the date the deduction was made.

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 North Lanarkshire 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 £1.00 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 6-8)
- 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 5).

North Lanarkshire Council has a legal requirement to issue a letter (DEA5) to the employer to implement a DEA, and this will be sent to the employer address provided by DWP. Even though you may have contracted a payroll provider to undertake your payroll activities associated with DEA, it is your responsibility to ensure the letter (DEA5) is forwarded to the payroll provider. Do not ask North Lanarkshire Council to amend your employer address to direct the DEA5 to your payroll provider.

North Lanarkshire Council

It is North Lanarkshire's Council 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:
 - 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
 - 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 Housing Benefit Overpayment Debt Recovery on 01698 403212 Opt 2 or email benefitoverpayments@northlan.gov.uk for information on how these monies can be returned to you.

North Lanarkshire Council is not able to:

- return monies to an employer where a DEA payment was applicable, but was calculated at an incorrect rate, for example:
 - 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:
 - 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 North Lanarkshire Council

You are required to pay the amount you have calculated and deducted from your employee's net wages to North Lanarkshire Council as soon as possible. Ideally this will be at the same time as you make the deduction(s) from your employee's salary. However, you must send us the payment 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 30th September, you must send it to us before 19th October; if you take the money on 1st October, you must send it to us before 19th November).

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

How to pay

Please allow at least four working days for a payment to reach us.

Please note that all payments should be sent via BACS to the following account quoting the relevant Invoice Ref Number as stated – the invoice number detailed within the DEA instruction is unique to the specific employee:

Royal Bank of Scotland

Sort Code: 83-07-06

Account No: 19648829

Account Name: North Lanarkshire Council Debtors Account

Payment Reference: Employee's Invoice Ref Number (this is quoted on the DEA5 Letter)

Card

If you wish to make a payment by debit card (or Visa Debit, Debit MasterCard, Maestro, Solo and Visa Electron) use the telephone number 01698 403212 opt 2. Please have your card details and the employee's invoice reference number to hand along with your letter when you ring.

A card payment can only be made for one individual employee and you must quote the Employee's invoice reference number. If you have more than one employee, you must make a separate payment for each employee.

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

Where can I get more information?

The DWP provide further guidance for employers on GOV.UK - Direct Earnings Attachment - A More Detailed Guide, which includes worked examples. Please note that as the calculations are examples, the personal information contained in the calculations is not factual and has been created for the purpose of providing examples.

Questions & Answers

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

A: If the weekly or monthly earnings are below the threshold (see Table A (page 7) or Table B (page 8) you cannot make a DEA deduction, *you must contact us 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.

Q: I have received a letter from North Lanarkshire Council to apply a fixed rate amount. What is this?

A: In exceptional circumstances North Lanarkshire council may negotiate a fixed DEA deduction rate which is usually a lower amount than the DEA deductions calculated by you. If we deem that the employee should be set at a fixed rate we will write to you to apply the new rate. 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 apply to a fixed rate deduction.

Q: I have been applying a fixed rate amount as requested by North Lanarkshire Council but the employee's earnings have now changed. What do I do?

A: 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 North Lanarkshire 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 Table A (page 7) or Table B (page 8)). The protected earnings rules still apply to a fixed rate deduction.

Q: 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?

A: 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.

Q: What do I do if I receive a request from DWP Debt Management to implement a DEA?

A: DWP Debt Management can use the same regulations as North Lanarkshire Council to implement a DEA. However, they are different organisations, and should be treated separately. This guidance only relates to North Lanarkshire Councils DEAs. It is very important that North Lanarkshire Council DEA payments are sent to the account number and/or address detailed in this leaflet, and DWP Debt Management DEA payments are sent to the account number and/or address provided by them. If you send a North Lanarkshire Council DEA payment to DWP Debt Management it is your responsibility to ask them to return the money to you, and you must still make a payment to North Lanarkshire Council. DWP Debt Management and LA DEAs are both non priority orders (see pages 8-9).

Q: I send payments to other organisations such as DWP Child Maintenance Group. Can I use either of their accounts to send DEA deduction payments?

A: 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. These are separate organisations who work separately and the payments they collect are for their debt. Please note that if you send a payment to another government organisation in error it will be your responsibility to contact them and to recover the money.

Q: What if the employee thinks the amount they owe is wrong?

A: 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.

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

A: 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 the number at the top of the letter they received about the Direct Earnings Attachment.