

Attachment Orders

A guide for employers

Her Majesty's Courts Service

in association with

Court Service Northern Ireland

Scottish Government

Department for Work and Pensions

Department for Communities and Local Government

HM Revenue and Customs

Welsh Assembly Government

and the Local Government Association

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Foreword by Karen Thomson, Norman Green and Geoff Castle

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Foreword by Dave Foley, Director of Enforcement, HMCS

Employers in England, Wales and Northern Ireland have a vital role to play in administering Attachment of Earnings Orders (AEO) imposed by the courts, Child Support Agency or a local authority. These orders are legally binding and non-compliance may result in a fine or even imprisonment. Needless to say, it is essential that employers have access to accurate and concise guidance on how to operate an AEO.

This handbook has been substantially revised and edited. There is a new chapter covering the changes made by the Courts Act 2003, the Bankruptcy and Diligence etc - [Scotland] Act 2007 and fines deductions by fixed tables. The handbook also covers new topics such as Salary Sacrifice, Income Payment Orders and Income Support Deduction Notices.

I am confident that employers – whether a corporate plc or a small limited company – will find this a useful and informative document when served with an AEO for an employee. The work updating this handbook has been an excellent example of government and employers working together. It will undoubtedly contribute to the Secretary of State's priority to ensure respect for the orders of the courts and the successful enforcement of fines and civil debts.

We have received invaluable advice and support from policy leads across government departments, the Scottish Government, Welsh Assembly Government and Courts Service Northern Ireland as well as employers' representatives. It was a tribute to their hardwork and commitment over a two year period when the handbook was 'Highly Commended' at the Institute of Payroll Professional's annual awards ceremony in Edinburgh on 7 November 2007. I am very grateful for their help. As Director of Enforcement at HMCS, I welcome this updated handbook and I hope you find this guidance helpful when operating an AEO.

Dave Foley

Foreword by Karen Thomson, Norman Green and Geoff Castle

Employers understand their responsibilities to operate an Attachment of Earnings Order (AEO) imposed on their employees. They are legally binding orders and it is, therefore, essential that employers have access to up-to-date advice and guidance on how to administer them.

We were pleased to join the steering group established by Her Majesty's Courts Service (HMCS) to supervise and oversee the updating of the Attachment Orders handbook. It has been a genuinely collaborative exercise with members drawn from across Whitehall departments, the Scottish Executive, the Welsh Assembly Government and the Courts Service Northern Ireland and us representing employers.

The enforcement of financial penalties and civil debts is a priority for the Secretary of State and employers can contribute by efficiently operating AEO's served on their employees. We will work with HMCS to ensure the handbook is kept regularly updated to reflect any new regulations and changes to the law. We are sure employers will find this a helpful and informative guide.

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I Using this guide

Introduction

- 1.1 As an employer, you or your company may receive an order from the Centralised Attachment of Earnings Payments System (CAPS), a court, a local authority, or the Child Support Agency (CSA) to make deductions from the earnings of an employee. You may also receive a schedule of arrestment by an officer of the Scottish courts. The order will have been made because your employee:
- has incurred a debt or fine which a court has ordered him to pay
 - is in arrears with a Council Tax bill or
 - has been ordered to pay maintenance to support a spouse or child.
- 1.2 How you comply with an order depends on the type of order that you have received. Although the legislation governing attachment orders is broadly similar, there are some practical differences. You should therefore read carefully the section relevant to the order you have received. Figure 1 sets out the different types of order you may receive and figure 2 provides an overview regarding the types of earnings from which you should make a deduction.
- 1.3 When you receive an order, you **must** comply with it. Under some orders, you may be fined or even imprisoned for non-compliance. This booklet explains what to do; however, it is not intended to provide a precise interpretation of the law.
- 1.4 You are responsible for complying with an order, even if your employee works at a different location. The actual work, however, can be done by a wages clerk or branch manager. You can ask CAPS, the court, CSA or local authority to send further correspondence to an alternative address.
- 1.5 If you do not employ the person named on the order, or you do not think that you are his employer, you should write to CAPS, the court, CSA or local authority that made the order - a telephone call is not sufficient.
- 1.6 For further advice about a particular order, you should contact CAPS, the court, CSA or local authority that issued the order. Always quote the claim or reference number.

For single county court or Maintenance Orders you should call CAPS telephone help line: 08454 085312

Alternatively, you can write to CAPS at: **PO Box 404, NORTHAMPTON , NNI 2ZY**

Fax: 08454 085315

website: www.hmcourts-service.gov.uk/cms/1025.htm

email: Customerservice.caps@hmcourts-service.gsi.gov.uk

For Child Support Deduction from Earnings Orders (DEO), contact the CSA
 Telephone: 08457 133 133, Minicom 08457 138 924. Alternatively, write to:
 PO Box 55, Brierley Hill, West Midlands DY5 1YL

- 1.7 This handbook is only a general guide. It is intended to help you understand the main points about Attachment Orders. It is not a full description or statement of the law.

Figure 1 - Types of attachment order
England and Wales

| Order type | Issued By | Debt type | Payable To | Legislation |
|--|----------------------------|--------------------------------|--|---|
| Attachment of Earnings Order (AEO) | High Court | maintenance | CAPS | Attachment of Earnings Act (AEA) 1971 + Courts Act 2003 |
| CAEO (Consolidated AEO) | county court | civil debts | CAPS | AEA 1971 |
| AE on AO (AE order on an Admin Order) | county court | civil debts | CAPS | AEA 1971 |
| AEO | county court | maintenance civil debts | CAPS | AEA 1971 |
| AEO | magistrates' court | finances maintenance orders | magistrates' court | AEA 1971 |
| Council Tax AEO | local authority | council tax | local authority | Local Government Finance Act 1992 |
| Deduction from Earnings Order (DEO) | Child Support Agency (CSA) | child maintenance | CSA | Child Support (Collection and Enforcement) Regulations (CSR) 1992 |
| Income Payment Orders | High Court or County Court | bankruptcy | Official Receiver or Trustee in Bankruptcy | Insolvency Act 1986 |
| Income Support Deduction Notice (ISDN) | Jobcentre Plus | Income Support | Department for Work and Pensions (DWP) | Social Security Contributions and Benefits Act 1992 |

Scotland

| Type of arrestment | Issued By | Debt type | Payable To | Legislation |
|--|-----------------------------------|--------------------------------------|---------------------|---|
| Earnings Arrestment | sheriff court Court of Session | civil debts fines council tax | creditor | Debtors (Scotland) Act (DSA) 1987 Part III |
| Current Maintenance Arrestment | sheriff court Court of Session | maintenance | creditor | DSA 1987 |
| Conjoined Arrestment Order | sheriff court | more than one debt | sheriff court | DSA 1987 |
| Deductions from Earnings Order (DEO) | CSA | child maintenance | CSA | CSR 1992 |
| Debt Arrangement Scheme | employee | various depending on the arrangement | payment distributor | Debt Arrangement and Attachment (Scotland) Act 2002 and The Debt Arrangement Scheme (Scotland) Regulations (2004) |
| Income Support Deduction Notice (ISDN) | Jobcentre Plus | income support | DWP | Social Security Contributions and Benefits Act 1992 |

Northern Ireland

| Order Type | Issued By | Debt type | Payable To | Legislation |
|--|---------------------------------------|-----------------------|---------------------------------|--|
| Attachment of Earnings Order (AEO) | High Court | maintenance | creditor | Judgements Enforcement (Northern Ireland) Order (JEO) 1981 |
| Attachment of Earnings Order (AEO) | Enforcement of Judgments Office (EJO) | civil debts | Enforcement of Judgments Office | Judgements Enforcement (Northern Ireland) Order (JEO) 1981 |
| Attachment of earnings Order (AEO) | magistrates' court | maintenance, fines | magistrates' court | Magistrates' Courts (Northern Ireland) Order 1981 |
| Deduction from Earnings Order (DEO) | CSA | child maintenance | CSA | Child Support Regulations (Northern Ireland) 1992 |
| Income Support Deduction Notice (ISDN) | Jobcentre Plus | income support | DWP | Social Security Contributions and Benefits Act (NI) 1992 |

Figure 2 - A quick guide to attachable earnings

| | The legislation governing: | |
|--|--|------------------|
| Defines earnings as: | Attachment of Earnings Orders (maintenance, fines and civil debts) Earnings Arrestments Deduction from Earnings Orders | Council Tax AEOs |
| Wages and salary | Yes | Yes |
| Pension | Yes | No |
| Statutory sick pay | Yes | Yes |
| Excludes: | | |
| Disability pension | Yes | Yes |
| Statutory maternity, paternity and adoption pay | Yes | Yes |
| Sums payable by any public department of the Government of Northern Ireland or of a territory outside the UK | Yes | Yes |
| Armed forces' pay* | Yes | Yes |
| a Tax Credit | Yes | Yes |
| Wages payable to a person as a seaman | Yes | Yes |
| Guaranteed minimum pension | Yes | No |
| Defines residue as attachable after the following deductions: | | |
| Income tax | Yes | Yes |
| Pension, allowances or benefit payable under any enactment relating to social security | Yes | Yes |
| National Insurance contributions | Yes | Yes |
| Superannuation or pension contributions | Yes | Yes |

See Appendices A, B, C and D for a full definition as given in the relevant legislation.

If you are uncertain whether particular earnings are attachable, you should contact the court, CSA or local authority that made the order.

* Special arrangements are in place for armed forces pay. The Fines Officer at the local magistrate's court can advise further. The Armed Forces Act 2006 at Sections 341 and 342 is the authority to make deductions from salaries.

2 Attachment of Earnings

2.1 Maintenance, Fines (pre 5 April 2004), Civil Debts (England and Wales)

- 2.1.1 Introduction
- 2.1.2 How to operate an Attachment of Earnings Order (AEO)
- 2.1.3 Making deductions
- 2.1.4 What if you pay your employee monthly but the order specifies weekly deductions?
- 2.1.5 Your expenses
- 2.1.6 Informing your employee of deductions
- 2.1.7 Making payments
- 2.1.8 What do you do if you receive more than one AEO for the same employee?
- 2.1.9 What do you do if you receive an AEO and another type of order for the same employee?
- 2.1.10 Can the court change the order?
- 2.1.11 Temporary variations by a magistrates' courts
- 2.1.12 Order discharged or ceased
- 2.1.13 Your employee leaves your employment
- 2.1.14 Your obligations to the court
- 2.1.15 Your employee and the court
- 2.1.16 Enforcement of Attachment of Earnings Orders from abroad
- 2.1.17 Enforcement of cross-border Attachment Orders
- 2.1.18 Further help and advice
- 2.1.19 Calculating Deductions: Attachment of Earnings Orders
- 2.1.20 Attachable earnings
- 2.1.21 Normal deduction
- 2.1.22 Protected earnings
- 2.1.23 Priority and non-priority orders
- 2.1.24 Calculations for non-priority attachment of earnings orders

- 2.1.25 Attachable earnings too low to allow full deduction
- 2.1.26 Attachable earnings below protected earnings
- 2.1.27 Calculations for priority attachment of earnings orders
- 2.1.28 Attachable earnings too low to allow full normal deduction
- 2.1.29 Attachable earnings below protected earnings
- 2.1.30 Payment at unusual intervals (non-priority and priority orders)
- 2.1.31 Holiday pay in advance
- 2.1.32 Treatment of arrears of pay on attachable earnings

2.1.1 Introduction

This chapter deals with maintenance and fines imposed by magistrates courts before 5 April 2004 using the Protected Earning Rate (PER) and Normal Deduction Rate (NDR) and all civil debts. Fines imposed after 5 April 2004 are deducted by means of fixed tables as set out in the Courts Act 2003 and are covered in chapter 2.2

The Attachment of Earnings Act 1971 (“the 1971 Act”) allows a court to order you, or your company, to make deductions from the earnings of an employee to recover unpaid:

- maintenance (High Court, county courts and magistrates’ courts)
- fines (pre 5 April 2004 (magistrates’ courts))
- civil judgment debts (county courts).

The form that the court sends you will identify which type of attachment order you are being asked to operate.

Points to remember:

- maintenance and fines are priority orders and take ‘priority’ among themselves and other priority orders by date they were issued
- if an AEO is operating for a fine penalty prior to 5 April 2004, and the magistrates’ court imposes a new fine using the new fixed tables operative from 5 April 2004 (see chapter 2.2), then the court will be able to consolidate the two AEOs under one priority consolidated AEO to be deducted by fixed tables. You may exceptionally receive a consolidated order that pre-dates 5 April due to the date of the earlier AEO. In this situation, the consolidated order assumes the priority date of the older of the two AEO.

2.1.2 How to operate an AEO

An AEO tells you:

- the total debt owed by your employee (unless the order is for ongoing maintenance)
- how often you should make a deduction (usually weekly or monthly). Note, however, that CAPS orders (for County Court Judgements) do not tell an employer how often to make payments. Many employers send payment weekly as the order shows the NDR and PER as weekly, but it can be paid monthly.
- the amount you should usually deduct each week or month (the NDR)
- the amount below which you must not make a deduction (the PER).

Note: *If your employee works at a different location to your office, the work can be done by a payroll administrator or a branch manager and you can ask the court to send further correspondence to an alternative address.*

AEOs can only be applied to certain types of earnings known as ‘attachable earnings’ (see Figure 2 on page 4 for a quick guide).

On each pay day you should:

- calculate your employee’s attachable earnings
- set aside your employee’s protected earnings

- deduct (if possible) the amount specified in the order
- send the deduction to the address stated in the order
- pay the remainder (if there are no other deductions to be made) to your employee

This procedure is set out in more detail on pages 15-21 with worked examples.

Under the 1971 Act you must:

- write to the court (or CAPS for County Court Orders) within **ten** days of receiving an order if you do not employ the person named in it
- take all reasonable steps to comply with an order or a varied order
- write to the court (or CAPS) within **ten** days if the employee leaves your employment – a telephone call is not sufficient. An AEO lapses from the pay day coinciding with or following termination of employment.

You must also:

- write to CAPS or the court that made the order within **seven** days if you learn that a new employee has an existing order against him, giving details of your employee's earnings and anticipated earnings.

Note: Failing to comply with an AEO, or failing to give the required notice within the time limits, are offences under the 1971 Act, subject to a fine that can be imposed on you or your organisation or a term of imprisonment up to 14 days. If you have any questions relating to the Order, or require clarification, you must contact the court or CAPS immediately.

The court will tell you in writing if it:

- changes (varies) the NDR or PER. A magistrates' court (for a maintenance order) may vary the PER for a period of up to four weeks. You should revert to the original PER after the period stated in the order
- discharges (cancels) the order, or if the order has been paid in full. You must stop deductions as soon as possible and certainly within **seven** days of receiving the notice. Any money deducted should be sent to the court at once. You should check the amount of the final deduction. It may be less than the usual deduction, for example when it completes payment of the sum due.

Note: You or your employee can make an application to the court at any time to settle a dispute about the operation of an order, or to resolve any uncertainty about whether particular earnings are attachable.

2.1.3 Making deductions

You should make deductions at the intervals laid down in the order from your employee's attachable earnings until the total debt owed by your employee is reached. If you receive an order for ongoing maintenance, you should make deductions until the court tells you to stop.

The order comes into force on the day you receive it. You should begin to make deductions on the first pay day after you receive the order, and on each future pay-day (pay-day is the day on which you pay your employee). Failure to do so may result in you being fined. However, you cannot be fined for failing to make a deduction on the first pay day if that falls within seven days of the date you receive the order.

| Example | |
|-----------|--|
| 3 March | An AEO is made against one of your employees |
| 21 March | You receive a copy of the order through the post |
| 24 March | Pay-day – you should apply the order if you can, but you cannot be fined if you do not make a deduction |
| but after | |
| 28 March | You must apply the order to your employee's earnings on the next pay day and begin making deductions. You may be fined if you do not make a deduction. |

2.1.4 What if you pay your employee monthly but the order specifies weekly deductions?

If you receive a county court AEO and you pay your employee monthly but the order specifies weekly deductions, you can ask the court to recalculate and amend the order so that you can make monthly deductions. Similarly, if the court orders monthly deductions and you pay your employee weekly, you can ask the court to recalculate and amend the order so that you can make weekly deductions.

If you receive a magistrates' court AEO and you pay your employee monthly but the order specifies weekly deductions, you cannot ask the court to amend the order. Your employee, however, can ask for an amended order and you should ask him to contact the court.

2.1.5 Your expenses

Each time you make a deduction you may deduct £1 from your employee's earnings towards your administrative costs for operating the order, even if this reduces your employee's income below the PER. You cannot make this charge if you do not make a deduction.

2.1.6 Informing your employee of deductions

You must inform your employee in writing about each deduction, including the amount you can deduct towards your costs, when he is given his pay statement. If you provide pay statements that detail all deductions, this will be sufficient. Otherwise you should inform him in writing as soon as possible after making the deduction.

2.1.7 Making payments

For county court orders ordering payment of a single civil judgment debt, you should send the payment to CAPS using the paying in slip that it will provide. You will be given a new paying in slip each time you make a payment.

Note: *It is not a requirement that payments be sent with this document. As long as CAPS have the case number on the paperwork or BACS payment schedule, then a payment can be accepted.*

If you are administering more than one order, it will be in schedule format. You should never send the actual order. If you currently use a schedule (e.g. computer print out) you

may continue to do so, but CAPS will not return it. Consolidated Orders (CAEOs) or AEOs on Administration Orders (AEOs on AOs) should be sent to the local court.

For all other orders, including magistrates' court orders and High Court orders, you should send the payment to the court which made the order (unless the order directs otherwise) as soon as possible, stating the name of the employee and the case number. This information is on the copy order sent by the court. If you are making a payment under one order only, you may find it helpful to enclose the copy order with the payment. It will be returned to you by the court with a receipt.

Note: Courts of one type cannot accept payments for another type of court. For example, you must not send payments under a magistrates' court AEO to CAPS or vice versa.

If you are making payments under two or more orders issued by the same court, you can pay by sending a lump sum cheque covering deductions for more than one employee. You must send a paper schedule setting out the details of each payment you include.

You should make your cheques payable to: **HMCS**

Some courts may send pre-paid envelopes for you to use to send payments, but you must send deductions even if you do not receive an envelope.

CAPS and some magistrates' courts allow you to pay by BACS. Contact the CAPS helpdesk or magistrates' court that made the order if you wish to pay in this way. CAPS can also take BACS payments; employers should contact the CAPS helpdesk or refer to its website for further information (www.hmccourts-service.gov.uk/cms/1025.htm)

2.1.8 What do you do if you receive more than one AEO for the same employee?

If you have two or more AEOs for civil judgment debts for the same employee, you can ask the court if a CAEO can be made. A CAEO will simplify your calculations and allow you to make a single deduction each payday. The court will recalculate the PER and the NDR and send you a new order. However, until a consolidated order is made, you must continue to make deductions under the existing AEOs.

Note: AEOs for maintenance or a fine cannot be included in a CAEO.

2.1.9 What do you do if you receive an AEO and another type of order for the same employee?

You will find help in chapter 7 (Priority of Orders) if you receive more than one order for the same employee.

2.1.10 Can the court change the order?

The court may change the NDR or the PER at any time. You will be sent a copy of the varied order. If possible, you should comply with the new order from the first pay day after receiving it. But you will not be fined for failing to comply if the pay day falls within a week of receiving the order (see the example in paragraph 2.1.3).

2.1.11 Temporary variations by a magistrates' court

A magistrates' court may vary the PER for a period of up to four weeks. You will be sent a copy of the varied order. You should revert to the original PER rate after the period stated in the order.

You should use the temporary rate on the first pay day possible and count the stated period from that date. For example, a three-week variation of an order requiring deductions to be made weekly would be operated on three weekly pay days. Any deficits in protected earnings and normal deductions should be carried over in the normal way.

2.1.12 Order discharged or ceased

The court or CAPS will notify you in writing when an order has been paid in full, is discharged (cancelled), or ceases to have effect. You must stop deductions as soon as possible and certainly within **seven** days of receiving the notification. Any money deducted should be sent to the court at once.

Note: You should check the amount of the final deduction as it may be less than the usual deduction.

2.1.13 Your employee leaves your employment

If your employee leaves your employment, the AEO will lapse from the payday coinciding with or following termination of employment.

2.1.14 Your obligations to the court

You must:

- give a signed statement of an employee's earnings if the court requires you to do so
- write to the court or CAPS within **ten** days if you receive an order and you do not employ the person named in it - for single county court and maintenance orders you should write to CAPS.
- take all reasonable steps to comply with an order or a varied order
- write to the court (or CAPS) within **ten** days (a telephone call is not sufficient) if the employee leaves your employment. If you know the name and address of the employer, it would be helpful to give the court this information
- write to the court (or CAPS) that made the order within **seven** days if you learn that a new employee has an existing order against him, giving details of your employee's earnings and anticipated earnings.

Note: It would be helpful if employers could inform CAPS if no deductions can be made and the reasons why.

2.1.15 Your employee and the court

Before an order is made, your employee has an opportunity to put his case to the court. He may at any time apply to the court for its discharge or variation. If he complains to you about the order, you should refer your employee to the court that imposed the AEO. If he does not understand how the order works, the court should be able to explain it to him or tell him where he can get more information.

Your employee must notify the court (or CAPS) within **seven** days that he has left your employment, and within **seven** days of starting a new job, giving the name and address of his new employer and details of his salary.

2.1.16 Enforcement of AEOs from abroad

UK-based employers are currently obliged only to comply with AEOs made by courts in the UK and not equivalent orders made by courts abroad. However, judgments for money debts made in certain other countries can be registered with a court in the UK and then enforced in the usual way, such as by attachment of earnings. If this occurs, from your point of view there will be no difference compared to a normal UK order. Further details are set out at Part 74 of the Civil Procedure Rules that can be found on the website of the Department for Constitutional Affairs. A full analysis of enforcement of judgments from outside the UK is outside the scope of this handbook, however.

2.1.17 Enforcement of cross-border Attachment Orders

Whilst HMCS and the Scottish Government are aware that legal issues regarding jurisdictional priority of orders have been raised, the extent of the problem is still not clear and whether it need be resolved. Both the Scottish Government and HMCS have many other competing priorities at the moment and it is therefore unlikely that an acceptable solution can be reached (and then implemented) in the near future. We will keep the situation under review.

2.1.18 Further help and advice

If you need further advice on a particular case, you should contact CAPS or the court which made the order. Always quote the case or reference number.

2.1.19 Calculating Deductions: Attachment of Earnings Orders

Introduction

The type of order you receive will determine the method you should use to calculate deductions. This section explains how to calculate deductions for:

- AEOs made by courts in England and Wales to recover unpaid maintenance, fines, or civil debts before 5 April 2004
- AEOs made by courts in Northern Ireland to recover unpaid maintenance and civil debts.

AEOs can only be applied to certain categories of earnings, referred to as attachable earnings. You will need to calculate your employee's attachable earnings before you can make the deduction specified in the order.

2.1.20 Attachable earnings

Attachable earnings are defined by the legislation relevant to the particular order. Figure 2 on page 4 provides a quick guide, and Appendix A gives further details (employers in Northern Ireland should see Appendix B).

Note: If you lend money to your employee (for example, for a train season ticket), you should not make a deduction under an AEO from the total loan. But if you then recover the loan through your employee's earnings, you must make the AEO deduction before you take any repayment towards the loan.

2.1.21 Normal deduction

The NDR is the amount that the court calculates is reasonable to pay your employee's debt(s). In the case of an order for payment of maintenance, it is the amount that the court considers necessary and reasonable for the maintenance of a child or spouse.

The NDR is usually expressed in an order as a weekly or monthly rate. You should adjust the amount proportionally if earnings are paid at unusual intervals (see paragraph 2.1.29).

2.1.22 Protected earnings

The PER/PEP is the amount that the court calculates is necessary for your employee's family and household bills. You should set aside the protected earnings before making a deduction.

Protected earnings are usually expressed in an order as a weekly or monthly rate. You should adjust the amount proportionally if earnings are paid at unusual intervals.

2.1.23 Priority and non-priority orders

The orders referred to in this section fall into two categories:

- AEO for maintenance or fines (priority AEOs) and
- AEOs for civil debts (non-priority AEOs).

The forms you receive will identify which type of order you are being asked to operate. Note that other than on a maintenance order, CAPS orders do not specify whether they are priority or non-priority.

There are differences in the way you operate each type of order. Examples 1-3 deal with non-priority orders and examples 4-6 with priority orders. Examples 7-8 deal with both non-priority and priority orders where earnings are paid at unusual or irregular intervals.

The important difference between 'priority' and 'non-priority' orders is that any shortfall in the normal deduction or the protected earnings (if specified) is carried forward from pay day to pay day until it is cleared.

2.1.24 Calculations for non-priority attachment of earnings orders

Normal procedure for each pay-day

| Example 1 |
|--|
| <p>PER = £151.15</p> <p>NDR = £25</p> <ul style="list-style-type: none"> • Calculate your employee's attachable earnings, e.g. £191.27 • Set aside his protected earnings £151.15 <p>This leaves £40.12</p> <ul style="list-style-type: none"> • Take off the normal deduction £25 <p>This leaves £15.27</p> <p>Now:</p> <ul style="list-style-type: none"> • Send the £25 normal deduction to the court • Deduct £1 if you wish from the remainder for making the deduction • Pay your employee his protected earnings (£151) and the remainder (£14.27), i.e. £165.27 in total |

2.1.25 Attachable earnings too low to allow full deduction

If your employee earns less than usual, you must still set aside his protected earnings even if that does not leave enough for the normal deduction.

| Example 2 |
|--|
| <p>PER = £151.15</p> <p>NDR = £25</p> <ul style="list-style-type: none"> • calculate your employee's attachable earnings, e.g. £171.27 • set aside his protected earnings £151.15 <p>This leaves £20.12</p> <p>As only £20.12 of the normal deduction can be met, now:</p> <ul style="list-style-type: none"> • send £20.12 to the court • deduct £1 if you wish from your employee's protected earnings for making a deduction (even if this reduces your employee's income below the protected earnings rate) <p>This leaves £150.15</p> <p>Now:</p> <ul style="list-style-type: none"> • pay your employee the remainder of his protected earnings, i.e. £150.15. The deduction is £4.88 short of the normal deduction of £25, but do not carry this deficit forward to the next pay-day. The normal deduction rate for a non-priority order should never be exceeded. |

2.1.26 Attachable earnings below protected earnings

If your employee's attachable earnings are less than his protected earnings, pay him the full attachable earnings. Do not carry forward the shortfall in the protected earnings or the normal deduction to the next pay-day.

Example 3

PER = £151.15

NDR = £25

- calculate your employee's attachable earnings, e.g. £141.27

As the protected earnings rate is £151.15, you cannot:

- make the normal deduction (£25) or
- take £1 from the sum paid to your employee as you have made no deduction

Now:

- pay your employee £141.27

Note: Do not carry forward the £9.88 balance of protected earnings or the unpaid normal deduction. You should not take either of them into account at the next pay-day.

2.1.27 Calculations for priority attachment of earnings orders

Normal procedure for each pay-day (priority AEOs)

Example 4

PER = £151.15

NDR = £25

- calculate your employee's attachable earnings, e.g. £191.27
- set aside his protected earnings £151.15

This leaves £40.12

- take off the normal deduction £25

This leaves £15.12

Now:

- send the £25 normal deduction to the court or Agency
- deduct £1 if you wish from the remainder for making the deduction
- pay your employee his protected earnings (£151.15) and the remainder (£14.12), i.e. £165.27 in total

2.1.28 Attachable earnings too low to allow full normal deduction

If you are operating a priority AEO and your employee earns less than usual, you must still set aside the protected earnings, even if this does not leave enough for the normal deduction. You will have to make up the full deduction as soon as possible.

| Example 5 |
|---|
| <p>PER= £151.15</p> <p>NDR = £25</p> <p>First pay-day</p> <ul style="list-style-type: none"> • calculate your employee's attachable earnings, e.g. £171.27 • set aside his protected earnings £151.15 <p>This leaves £20.12</p> <p>As only £20.12 of the normal deduction can be met, now:</p> <ul style="list-style-type: none"> • send £20.12 to the court or Agency, and carry forward the £4.88 deficit in the normal deduction to the following pay-day • take £1 from your employee's protected earnings for making a deduction <p>This leaves £150.15</p> <ul style="list-style-type: none"> • pay your employee his protected earnings i.e. £150.15 <p>Note: Do not carry forward the £1 you have deducted towards your expenses as a deficit of protected earnings.</p> <p>Second pay-day</p> <ul style="list-style-type: none"> • calculate your employee's attachable earnings, e.g. £191.53 • set aside his protected earnings £151.15 <p>This leaves £40.38</p> <p>Now:</p> <ul style="list-style-type: none"> • take off the deduction for the court or Agency (£25 normal deduction + £4.88 deficit carried forward from the previous pay-day) £29.88 <p>This leaves £10.50</p> <p>Now:</p> <ul style="list-style-type: none"> • send £29.88 to the court or Agency • take £1 if you wish from the remainder for making a deduction • pay your employee his protected earnings (£151.15) and the remainder (£9.50), i.e. £160.65 in total |

2.1.29 Attachable earnings below protected earnings

If your employee does not earn enough to cover even his protected earnings in one wage period, you will have to carry over to the next pay day both the shortfall in his protected earnings and the whole normal deduction.

Example 6

PER = £151.15

NDR = £25

First pay-day

- calculate your employee's attachable earnings, e.g. £143.27

As the protected earnings rate is £151.15, you cannot:

- make the normal deduction (£25) or
- take £1 from the sum paid to your employee as you have made no deduction

Now:

- carry forward £25 normal deduction to the following pay-day
- carry forward £7.88 deficit in protected earnings to the following pay-day
- pay your employee £143.27

Second pay-day

- calculate your employee's attachable earnings, e.g. £191.57
- set aside his protected earnings (£151.15 + £7.88 deficit) £159.03

This leaves £32.54

The total deduction due is £25 (from the previous pay-day) + £25 (from this pay-day)
= £50

Now:

- send £32.54 to the court or Agency, and carry forward £17.46 deficit to the following pay-day (and so on until the deficit is cleared)
- take £1 if you wish from your employee's protected earnings for making a deduction
- pay your employee £158.03

This will bring your employee's protected earnings up to date

Note: Do not carry forward the £1 you have deducted towards your expenses as a deficit of protected earnings even though you may have deducted it from your employee's protected earnings, as in this example.

2.1.30 Payment at unusual intervals (non-priority and priority orders)

For any period longer or shorter than that specified in the AEO, calculate the number of weeks (or days) for which pay is being given, and divide the total attachable earnings by this number. You will then be able to calculate the total amount of protected earnings and total normal deduction in the usual way.

| Example 7 |
|--|
| PER= £550 |
| NDR = £70 |
| The month is October |
| You usually pay your employee monthly but this month you have included an extra pay-day on 9 October |
| <ul style="list-style-type: none"> • calculate your employee's attachable earnings, e.g. £230.00 - (the payment in respect of the 9 days) • set aside his protected earnings i.e. £550 divided by 31 days x 9 days £159.68 |
| This leaves £70.32 |
| <ul style="list-style-type: none"> • take off normal deduction i.e. £70 divided by 31 days x 9 days £20.32 |
| This leaves £50.00 |
| Now: |
| <ul style="list-style-type: none"> • send £20.32 normal deduction to the court or Agency • deduct £1 if you wish from the remainder for making the deduction • pay your employee his protected earnings (£159.68) and the remainder (£49.00), i.e. £208.68 in total |

Note: *If your employee leaves your employment, the pay period to which you should apply the PER and NDR runs from the last pay-day before he left until the day you pay him his final amount of earnings. For example, you pay your employee monthly. You paid him on 30 June. He leaves on 12 July. You pay him his final earnings on the next pay-day, which is 31 July. Although he only receives twelve days' earnings, you should apply the PER and NDR to the whole of the pay period from 1 July to 31 July.*

2.1.31 Holiday pay in advance

If you have been ordered to make a weekly deduction, and you are paying your employee earnings in advance (e.g. because he is going on holiday) you should:

- calculate your employee's total attachable earnings for the pay period
- multiply the PER and the NDR by the number of weeks in the pay period
- set aside the aggregated PER and take off the aggregated NDR in the usual way.

However, because you are only making one deduction, you may only deduct £1 from the remainder towards your administrative costs, and not £1 for each week included in the pay period.

Example 8

PER = £140

NDR = £30

Pay-day at end of a week before 2 weeks' holiday

- calculate your employee's attachable earnings, e.g. (1 week's pay at £367.51 plus 2 weeks at £200 a week) £767.51
- set aside his protected earnings (3 weeks at £140 a week) £420

This leaves £347.51

- take off normal deduction (3 weeks at £30 a week) £90

This leaves £257.51

Now:

- send £90 to the court or Agency
- take £1 if you wish from the remainder for making the deduction
- pay your employee his protected earnings (£420) and the remainder (£256.51), i.e. £676.51 in total

2.1.32 Treatment of arrears of pay on attachable earnings

HMCS has been asked to clarify the position on the treatment of backpay (arrears of pay) on attachable earnings. The following example may be of interest.

Example 9

An employee has an AEO with a PER of £750 per month and an NDR of £50 month. Their normal "attachable earnings" are £700 per month. This month they receive a backdated pay award that has increased their normal "attached earnings" to £740 per month. However, their backpay has further increased the "attachable earnings" to £800 for this month. Accordingly the NDR of £50 is deducted from their pay and paid to the Court.

The employee states that as their back pay of £60 relates to previous months, they should not pay anything towards their AEO (had they received the award on time they would not of have had a deduction made). The rulings are that the "attachable earnings" are looked at on a period by period basis and do not take into consideration what period(s) the pay is made from.

2 Attachment of Earnings

2.2 Fines by fixed table deductions (post 5 April 2004) (England and Wales)

- 2.2.1 Introduction
 - 2.2.2 Background
 - 2.2.3 Legal requirements
 - 2.2.4 How to comply with an order
 - 2.2.5 The types of earnings from which to make deductions
 - 2.2.6 What happens if I do not pay my employee monthly or weekly?
 - 2.2.7 How do I calculate deductions when the employee receives holiday pay in advance?
 - 2.2.8 How do I calculate deductions when the employee has two jobs?
 - 2.2.9 What should I do if the attachable earnings are too low to allow the full deduction?
 - 2.2.10 Making payments
 - 2.2.11 Points to remember
 - 2.2.12 Further help and advice
- Annex A - template letter from employer to court
- Annex B - the new fixed tables for magistrates' courts' fines AEOs

2.2.1 Introduction

This chapter deals with fines by fixed table deductions imposed after **5 April 2004**. The relevant legislation is the Courts Act 2003. Fines always assume a priority status under the 1971 and 2003 Acts.

2.2.2 Background

Since 5 April 2004, new fines AEOs issued under the Courts Act 2003 (“the 2003 Act”) by magistrates’ courts in England and Wales have been deductible by fixed tables (see Annex B) in a similar way to Council Tax attachments currently deducted by employers. The tables used for fines have the same percentage deductions as those currently used for Council Tax deductions. In most cases, therefore, the payroll software currently in use can be adapted simply for this purpose.

2.2.3 Legal requirements

Under the 1971 Act, you must

- write to the court within **ten days** if you receive an order and you do not employ the person named in it
- take all reasonable steps to comply with an order or a varied order
- write to the court within **ten days** (a telephone call is not sufficient) if the employee leaves your employment. An AEO lapses from the pay day coinciding with, or following, termination of employment. A template letter is provided for this purpose at Annex A of this booklet.

You must also:

- write to the court that made the order within seven days if you learn that a new employee has an existing order against him, giving details of your employee’s earnings and anticipated earnings.

Failing to comply with an AEO, or failing to give the required notice within the time limits are offences under the 1971 Act, subject to a fine that can be imposed on you or your organisation or even a term of imprisonment.

You or your employee can make an application to the court at any time to settle a dispute about the operation of an order, or to resolve any uncertainty about whether particular earnings are attachable.

2.2.4 How to comply with an order

Making deductions

The order comes into force on the day you receive it. You should begin to make deductions the next time you pay your employee and on each future pay day.

There is no liability for a fine for non-compliance with the order if the first pay day falls within **seven days** of the date the order was received and no deduction is made on that first pay day.

You should make deductions from your employee's earnings until the total debt owed by your employee is reached. If you receive an order for ongoing maintenance, you should make deductions until the court tells you to stop.

Each time you make a deduction:

- you may deduct £1 from your employee's earnings towards your administrative costs for operating the order (even if this reduces your employee's income below the protected earnings rate)
- you must inform your employee in writing about each deduction (including the amount you can deduct towards your costs) as soon as possible after making the deduction.

If you are operating a magistrates' court (maintenance) AEO only your employee can ask the court to vary the order.

2.2.5 The types of earnings from which to make deductions

The 1971 Act defines 'earnings' as:

- wages and salary (including bonuses, fees, overtime and commission)
- pension (for past service and compensation for loss of employment)
- statutory sick pay
- holiday pay or other pay advances

but excludes

- armed forces pay¹
- a tax credit
- wages payable to a person as a seaman
- disability pension
- statutory maternity pay, statutory adoption pay, statutory paternity pay
- guaranteed minimum pension (as provided by the Pension Scheme Act 1993)
- statutory redundancy pay
- sums payable by any Public Department of the Government of Northern Ireland or of a territory outside the UK.

You must only make a deduction from what is left from the attachable earnings (as defined by the 1971 Act) after you have deducted:

- income tax (PAYE)
- national insurance contributions
- superannuation or pension contributions (excluding free standing additional voluntary contributions and contributions to stakeholder pension schemes).

¹ The Armed Forces Act 2006 at sections 341 and 342 is the authority to make deductions from salaries

If you lend money to your employee and then recover the loan through your employee's earnings, you must make the AEO deduction before you take any repayment towards the loan. But do not make a deduction under an AEO from the loan when you give it to the employee.

The following tables provide worked examples with monthly, weekly and daily deductions.

| | |
|--|-------------|
| Example 1 : for monthly paid employee: | |
| You receive an AEO from a magistrates' court dated post 5 April 2004 ordering you to make deductions according to the new fixed tables (see Annex B). Your employee is paid monthly | |
| <ul style="list-style-type: none"> To use the tables, first calculate the employee's gross earnings comprising his monthly wages (including bonuses, overtime or commission but do not include disability pension or Statutory Maternity, Paternity and Adoption Pay)) i.e. | £1200 |
| <ul style="list-style-type: none"> Deduct tax, NI and pension scheme contributions | £240 |
| That leaves net earnings (attachable earnings) of | £960 |
| <ul style="list-style-type: none"> Read off the appropriate deduction percentage from column 1 of Table B – in this example £960 would signify a deduction of 12% (or at the % level contained in the tables as specified by the court) i.e. | £115.20 |
| <ul style="list-style-type: none"> Send the 12% attachment (£) to the magistrates' court i.e. | £115.20 |
| <ul style="list-style-type: none"> Deduct £1 if you wish from the remainder for your administrative costs | |
| <ul style="list-style-type: none"> Pay your employee £843.80 and itemise the deduction on his payslip. | £843.80 |

2.2.6 What happens if I do not pay my employee monthly or weekly?

Fixed tables deductions are given for monthly, weekly and daily pay periods. You should use these multipliers where the payment period is irregular.

Where you pay your employee in multiples of weeks or months you should use the weekly or monthly tables as follows.

- Suppose you pay your employee every 4 weeks. When you have calculated attachable earnings as above (say £1000)
 - Divide this by 4, the number of weeks the pay represents
 - Look up the resulting figure (£250) in the weekly table
 - For this level of earnings, the percentage to be applied is 12%
 - Apply the percentage to the earnings at (2), giving £30
 - Multiply this deduction amount by the number of weeks the total pay represents (4 in this case giving £120)

2.2.7 How do I calculate deductions when the employee receives holiday pay in advance?

If you have been ordered to make a weekly deduction and you are paying your employee earnings in advance (for example because he is going on holiday), you should follow the approach set out in example 2:

| | |
|---|--|
| <p>Example 2: for employee paid holiday pay in advance:</p> <p>You receive an AEO from a magistrates' court dated January 2005, ordering you to make deductions according to the new fixed tables (see Annex B). Your employee is paid weekly.</p> <p>If in one week's pay you give your employee a lump sum combining both normal pay and holiday pay, for, say, two weeks:</p> | |
| <ul style="list-style-type: none"> • Split the attachable earnings element of the pay into normal pay and holiday pay, for example normal = £300 holiday pay = £500 (£275 for the first week and £225 for the second) • Calculate the deduction on the normal pay in the normal way • Read off the appropriate deduction percentage from Column I of Table A - in this example £300 would signify a deduction of 17%, i.e. • Now calculate the deduction on the holiday pay by dividing the total by the number of weeks it represents, calculate the corresponding weekly deduction and multiply that back up by the number of weeks. • This represents two weeks pay so £500 is divided by 2 giving £250 • Read off the appropriate deduction percentage from Column I of Table A - in this example £250 would signify a deduction of 12% , i.e. • Multiply by the number of holiday weeks (2) giving £60.00 • Send the total attachment (£51 + £60) to the magistrates' court, i.e. • Deduct £1 if you wish from the remainder for your administrative costs • Pay your employee £688.00 and itemise the deductions on his payslip • Note that if you made three separate payments (not advancing the holiday pay) then you should calculate the deduction on each payment when it is made. | <p>£51</p> <p>£250</p> <p>£30</p> <p>£60</p> <p>£111</p> |

2.2.8 How do I calculate deductions when the employee has two jobs?

If you have an employee with two (or more) jobs with you, for one of which he is paid monthly and the other weekly, you must apply the normal rules to the most frequent payment. All payments less frequent are subject to a fixed deduction of 20%. You must apply these rules even where the less frequent payment is the main employment. The correct approach is set out in example 3:

| |
|--|
| <p>Example 3: for employee with weekly and monthly pay</p> <p>You receive an AEO from a magistrates' court dated February 2005, ordering you to make deductions according to the new fixed tables (see Annex B). Your employee has two jobs with you. In his main job, he is paid monthly and for his second job he is paid weekly.</p> <p>His attachable earnings (after income tax, National Insurance contributions and pension contributions) for the monthly job are £1000 and for the weekly pay are £150. The rules for AEOs require you to do a normal calculation on the more frequently paid earnings – in this case the weekly payments.</p> |
|--|

| | |
|---|---------------------------|
| <p>First calculate the deduction on the more frequent earnings – the weekly pay</p> <ul style="list-style-type: none"> • Calculate the deduction on the weekly pay in the normal way • Read off the appropriate deduction percentage from Column I of Table A - in this example £150 would signify a deduction of 7% i.e. • When you make this deduction, you may deduct £1 towards your costs. • Show the AEO deduction (and the administration fee, if you take it) on your employee's payslip and pay the £10.50 into the Court. <p>When you pay the monthly pay, the AEO must be deducted at the special rate of 20%</p> <ul style="list-style-type: none"> • Now calculate the deduction on the monthly pay 20% of £1000 is £200 • Show the AEO deduction (and the administration fee, if you take it) on your employee's payslip and pay the £200 into the Court. | <p>£10.50</p> <p>£200</p> |
| <p>Note:</p> <ul style="list-style-type: none"> • You may take an administrative fee of £1 each time you make a deduction from his weekly pay but you cannot take an additional £1 if you make a deduction from his monthly pay and you pay the salaries on the same pay-day • Section 14 of the Fines Collection Scheme sets out what an employer should do when he pays an employee a regular payment (e.g. basic salary) and an irregular payment at the same time (e.g. bonus or holiday pay). In these cases the sums should be added together and treated as one sum using the fixed tables. | |

| |
|---|
| <p>Example 4: Fixed tables deductions are given for monthly, weekly and daily pay periods. You should use these multipliers where the payment period is irregular.</p> <p>Where you pay your employee in multiples of weeks or months you should use the weekly or monthly tables as follows.</p> |
| <p>Suppose you pay your employee every 4 weeks. Then, when you have calculated attachable earnings as at example 3 (say £1000):</p> <ul style="list-style-type: none"> • Divide this by 4, the number of weeks the pay represents • Look up the resulting figure (£250) in the weekly table • For this level of earnings, the percentage to be applied is 12% • Apply the percentage to the earnings, giving £30 • Multiply this deduction amount by the number of weeks the total pay represents (4 in this case giving £120) |

2.2.9 What should I do if the attachable earnings are too low to allow the full deduction?

You should not make a deduction as the fixed tables do not allow deductions below a defined minimum threshold depending on the frequency of payment (£55 weekly, £290 monthly and £3 daily).

2.2.10 Making Payments

You should send the payment to the court which made the AEO (unless the order tells you otherwise) as soon as possible, stating the name of the employee and the case number. This information is on the copy order sent by the court.

If you are making payments under two or more orders issued by the same court, you can pay a lump sum by cheque. You must send a paper schedule setting out the details of each payment you include.

You should make your cheques payable to: **HMCS**

Some magistrates' courts allow you to pay by individual automated credit transfer payments using BACS. Contact the magistrates' court that made the order if you wish to pay in this way.

2.2.11 Points to remember

- Fines are priority orders and take priority among themselves and other priority orders by date they were issued
- If an AEO is operating for a fines offender prior to 5 April 2004 in the old style, and the magistrates' court imposes a new additional fine upon that employee (post 5 April 2004), the court will be able (under the Attachment of Earnings Rules, 1971) to consolidate the two AEOs under one priority consolidated AEO to be deducted by fixed tables. You may therefore exceptionally receive a consolidated order which pre-dates 5th April due to the date of the earlier attachment of earnings order. In this situation, the consolidated order assumes the priority date of the oldest of the two AE Orders
- When operating an order under either the 1971 or 2003 Acts student loan repayments must be taken.

2.2.12 Further help and advice

For further help and advice about a particular order, you should contact the court that made the AEO.

Always quote the case or reference number.

Annex A: template letter from employer to court

[Employer's Headed Notepaper and address]

To: xxxx magistrates' court
Address
For the attention of the Fines Officer)

Date:

Case No/ Court Order No: Dated:
Name of employee:
Payroll number:

Notice to Court Upon receipt of Attachment of Earnings Order

I have received the above Court Attachment of Earnings Order and would inform the court that:-

- the above-named employee has never been employed by me/in this organisation's employment (delete as appropriate)
- the above-named employee is no longer employed by me/this organisation (delete as appropriate)
- the above-named employee ceased employment here on [date] and his last pay day was [date]
- the above-named employee is now employed by: (name and address and payroll number (if known) of new employer)

New employer:

Address:

Payroll Number (if known)

Start date of new employment:

It is an offence to knowingly give false or misleading information to the court this may result in a fine or a term of imprisonment under the Attachment of Earnings Act 1971.

Signed:

Name : (Block caps).....

Job title:

Annex B: the new fixed tables for magistrates' courts fines AEOs

Table A - Deductions from weekly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---------------------------------------|---|
| Not exceeding £55 | 0 |
| Exceeding £55 but not exceeding £100 | 3 |
| Exceeding £100 but not exceeding £135 | 5 |
| Exceeding £135 but not exceeding £165 | 7 |
| Exceeding £165 but not exceeding £260 | 12 |
| Exceeding £260 but not exceeding £370 | 17 |
| Exceeding £370 | 17 in respect of the first £370 and 50% in respect of the remainder |

Table B - Deductions from monthly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---|--|
| Not exceeding £220 | 0 |
| Exceeding £220 but not exceeding £400 | 3 |
| Exceeding £400 but not exceeding £540 | 5 |
| Exceeding £540 but not exceeding £660 | 7 |
| Exceeding £660 but not exceeding £1040 | 12 |
| Exceeding £1040 but not exceeding £1480 | 17 |
| Exceeding £1480 | 17 in respect of the first £1480 and 50% in respect of the remainder |

Table C - Deductions from daily earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|-------------------------------------|--|
| Not exceeding £8 | 0 |
| Exceeding £8 but not exceeding £15 | 3 |
| Exceeding £15 but not exceeding £20 | 5 |
| Exceeding £20 but not exceeding £24 | 7 |
| Exceeding £24 but not exceeding £38 | 12 |
| Exceeding £38 but not exceeding £53 | 17 |
| Exceeding £53 | 17 in respect of the first £53 and 50% in respect of the remainder |

2 Attachment of Earnings

2.3 Council Tax (England and Wales)

2.3.1 Introduction

Administering Council Tax Attachment of Earnings Orders

2.3.2 How does a Council Tax Attachment of Earnings Order (CTAEO) arise?

2.3.3 What does a CTAEO look like?

2.3.4 What duties does a CTAEO place on the employer?

2.3.5 How should payments to the local authority be made?

2.3.6 What about administration costs?

2.3.7 How long does the CTAEO last?

2.3.8 What happens if the debtor leaves my employment?

2.3.9 What happens if an employer doesn't comply with a CTAEO?

2.3.10 What about duties on employees?

2.3.11 What about duties on local authorities?

Calculating deductions

2.3.12 What amount should an employer make a deduction against?

2.3.13. What are net earnings?

2.3.14. What are earnings?

2.3.15 How much should be deducted?

2.3.16 What if an employee is not paid in whole weeks or months?

2.3.17 What if more than one series of regular payments is made to an employee?

2.3.18 What if an employee is not paid at regular intervals?

2.3.19 What if an employee receives both regular and irregular payments?

2.3.20 What if a regular and irregular payment to an employee fall on the same day?

2.3.21 How should advances for holiday pay be treated?

2.3.22 How should other loans be treated?

Further information

2.3.23 Further help and advice

Annex A: Example of an Attachment of Earnings Order

Annex B: Legislation

Annex C: Deduction tables (Orders made before 1 October 1998)

Annex D: Deduction tables (Orders made between 1 October 1998 and 31 March 2007)

Annex E: Deduction tables (Orders made from 1 April 2007)

2.3.1 Introduction

This chapter is broken into three parts. The first (sections 1 to 11) explains how a council tax attachment of earnings order arises, what it looks like and how to deal with it. The second part (sections 12 to 22) explains how you calculate earnings and the appropriate deductions to make. The third part (section 23 and Annexes A to E) provides further useful information. Chapter 7 explains how you prioritise deductions when there is more than one order outstanding against one of your employees.

Note that this chapter applies to Council Tax Attachment of Earnings Orders (CTAEO) in England and Wales only. The system in Scotland operates differently and is covered in Chapter 3.

Before the introduction of council tax in April 1993, local authorities were partly funded from April 1990 by the Community Charge ('poll tax'). There may be a very few instances where you are asked by a local authority to apply a Community Charge Attachment of Earnings Order. In the unlikely event of this happening, you should contact your local authority for advice.

Administering Council Tax Attachment of Earnings Orders

2.3.2 How does a Council Tax Attachment of Earnings Order arise?

When a local authority issues a Council Tax bill and a reminder but does not receive payment, it may apply to a magistrates' court for a summons directing a person to appear before the court to explain why the council tax has not been paid.

If non-payment is proved, the court issues a liability order for Council Tax payable, plus the costs incurred by the local authority in obtaining the liability order. Once it has obtained a liability order, the local authority has a number of options, including attachment of earnings, for recovering the amount stated in the liability order.

If it considers attachment of earnings is the appropriate course, the authority will issue a CTAEO to the employer whom it believes has the debtor in his employment, sending a copy of the order to the debtor.

2.3.3 What does a CTAEO look like?

The format of the order is prescribed in regulations to ensure consistency of presentation and is therefore expressed in a rather formal way. The order states the name and address of the debtor (your employee), the amount they owe and requires that deductions are calculated, in accordance with the regulations, from net earnings. The order must be sent with the prescribed deduction tables and a copy of the regulations which deal with CTAEOs. You can find a copy of the order at Annex A and the relevant regulations at Annex B at the end of this chapter. Copies of the deduction tables can be found at Annexes C to E.

2.3.4 What duties does a CTAEO place on the employer?

If you receive a CTAEO for someone who is no longer or has never been in your employment then you should inform the issuing authority within fourteen days in writing and your responsibility to do anything under the order will cease.

If the person who is the subject of the order is in your employment you should make deductions from their earnings. Sections 2.3.12 to 22 explain how you should calculate earnings and the deductions to be made. These deductions should begin as soon as possible after the receipt of the order. The amount deducted should then be forwarded to the authority by the 19th day of the month following the month in which the deduction was made.

You must inform your employee in writing about each deduction, and of either the total deductions made under the order to date or the outstanding balance to be repaid to the authority, when they are given their pay statement. If no pay statements are usually given, you must inform them in writing as soon as possible after making the deduction. In each case you must include the amount you have deducted or will deduct towards your administrative costs for operating the order.

2.3.5 How should payments to the local authority be made?

You can pay by sending the local authority a cheque for each deduction or a lump sum cheque covering all orders in respect of your employees for an individual local authority. You should send a paper schedule with a lump sum cheque setting out the CTAEO reference number and amount of each individual deduction within the total payment. You are not required to list CTAEOs where no deduction is due, although you may wish to do so to demonstrate there has not been an accidental omission.

The local authority will tell you if you can pay in any other way and may send you payment slips or other documentation to send with each payment. This will enable the local authority to process the payment more quickly and will ensure that the correct account is credited. Although you are not obliged to use such documentation if it is not convenient, you should always quote the amount deducted under each order and the CTAEO reference number (you will find this on the order). This is particularly important if you are making a single payment for several orders.

2.3.6 What about administration costs?

You may deduct £1 towards your administrative costs from your employee's earnings each time you make a deduction under a CTAEO. This amount must be included when you notify your employee about deductions made.

2.3.7 How long does the CTAEO last?

Deductions should be made each pay day until the total amount specified on the order has been paid over to the authority or until the order is discharged by them.

2.3.8 What happens if the debtor leaves my employment?

If your employee leaves your employment, the order will lapse from the pay-day coinciding with or following termination of employment. You must notify the local authority in writing within fourteen days of the debtor leaving your employment. When the employee leaves your employment and you have notified the local authority nothing further is required of you. The local authority will have to serve a copy of the order on the new employer that will state the amount remaining to be deducted.

2.3.9 What happens if an employer doesn't comply with a CTAE0?

A CTAE0 is a legal document and an employer could be liable for a fine if they:

- fail to comply with the order unless they can prove all reasonable steps were taken to comply
- fail to give all required notifications relating to the CTAE0
- in giving notification make a statement which they know to be false in a material particular or recklessly make a statement which is false in a material particular.

2.3.10 What about duties on employees?

Within fourteen days of being asked to do so, your employee must write to the local authority giving:

- the name and address of their employer
- the amount of their net earnings and anticipated net earnings
- their place of employment, the nature of their work, and any pay reference/works number
- your employee must also write to the local authority within fourteen days of leaving your employment, or becoming unemployed or re-employed.

Employees could be liable for a fine where they fail, without reasonable excuse, to supply information or make a statement that they know to be false in a material particular.

2.3.11 What about duties on local authorities?

An authority must tell the employer when the whole amount to which a CTAE0 relates has been paid, including when the payment was not made by means of a CTAE0.

An authority may, on its own account, or on application by the debtor or the debtor's employer, make an order discharging the CTAE0. Where a CTAE0 is discharged the authority should notify the employer.

Calculating deductions

2.3.12 What amount should an employer make a deduction against?

You should make a deduction against the total net earnings received by the employee.

2.3.13 What are net earnings?

For the purposes of these orders, net earnings means earnings after the deduction of:

- income tax
- primary Class 1 national insurance contributions
- superannuation contributions and
- any deduction with a higher priority.(see chapter 7)

How to deal with advances and loans is covered below. Net earnings are referred to as 'attachable earnings' in the examples throughout this section.

2.3.14 What are earnings?

Earnings are defined as sums payable by way of:

- wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary payable under a contract of service)
- statutory sick pay.

Earnings do not include:

- sums payable by public departments of the Government of Northern Ireland or of a territory outside the United Kingdom
- pay and allowances of members of the armed forces (other than that paid by an employer to a person as a special member of a reserve force)
- benefit or allowances payable under any enactment relating to social security (this includes statutory maternity pay, statutory paternity pay and statutory adoption pay)
- tax credits
- allowances payable in respect of disablement or disability; and
- wages payable to a person as a seaman, other than as a seaman of a fishing boat.

2.3.15 How much should be deducted?

Once you have worked out your employee's net earnings, you should use the deduction tables that the local authority will send out with the CTAE0 to calculate how much should be deducted. Different levels of deductions apply depending on when the CTAE0 was originally made. Annex C sets out the rates applicable for orders made prior to 1 October 1998. Annex D sets out the rates applicable for orders made between 1 October 1998 and 31 March 2007 and Annex E sets out the rates applicable for orders made from 1 April 2007. All the examples assume that the CTAE0 was made on or after 1 April 2007.

Working out the correct amount to deduct from net earnings will usually be straightforward. You should simply find the attachable earnings range within which the employee falls in the first column of the deduction tables (weekly or monthly as appropriate) that the local authority will send you with the CTAE0 and apply the appropriate percentage deduction rate from the second column.

If you pay your employee at intervals of whole months or weeks, but not each week or month, for example fortnightly, then you should simply divide the payment by the number of weeks or months to which it applies, calculate the deduction as normal and then multiply the resulting amount by the number of weeks or months to arrive at the total deduction to be paid over.

Example 1: You have received a CTAE0 and you pay your employee fortnightly

- calculate your employee's attachable earnings, e.g. £600
- divide this by two to arrive at a weekly figure i.e. £300
- identify from Table 1 (Annex E) the correct percentage deduction rate, i.e. exceeding £225 but not exceeding £355 = 12%
- calculate the amount to be deducted on a weekly basis i.e. $300 \times 0.12 = £36$
- multiply this by two to arrive at the total amount to be deducted i.e. £72

This leaves £528

Now:

- send the deduction of £72 to the local authority
- deduct £1, if you wish, from the remainder for making the deduction
- pay your employee the remainder, i.e. £527

2.3.16 What if an employee is not paid in whole weeks or months?

If an employee is paid at regular intervals, but not at intervals of a whole number of weeks or months, then net earnings should be divided by the number of days. The daily deductions table should then be used to work out the appropriate daily rate, which should then be multiplied by the number of days in the period.

Example 2: You have received a CTAE0 and you pay your employee on the 10th, 20th and last days of each month. The pay period is 21 – 28 February.

- calculate your employee's attachable earnings, for the pay period, e.g. £560
- find the daily attachable earnings i.e. £560 divided by 8 days = £70
- identify from Table 3 (Annex E) the correct percentage deduction rate, i.e. exceeding £52 but not exceeding £72 = 17%
- calculate the amount to be deducted i.e. $70 \times 17\% = £11.90$
- multiply the deduction by eight = £95.20

2.3.17 What if more than one series of regular payments is made to an employee?

You may, for example, pay earnings to a salesperson on a weekly basis and pay them commission monthly. If this is the case, you should apply the appropriate table to work out the deduction for the series with the shortest interval between payments. This means that, if they are paid on a weekly basis but also receive a regular monthly sum, you should apply Table 1 to their weekly earnings. In addition, you should deduct 20% of the attachable earnings payable on a monthly basis.

Example 3: You have received a CTAE0 and you pay your employee weekly and monthly.

- calculate your employee's weekly attachable earnings, e.g. £200
- identify from Table 1 (Annex E), the correct percentage deduction rate, i.e. exceeding £185 but not exceeding £225
- calculate the amount to be deducted i.e. $£200 \times 7\% = £14$
- calculate your employee's monthly attachable earnings, e.g. £500
- calculate the appropriate deduction i.e. $£500 \times 20\% = £100$
- add the £14 and £100 together for payment to the local authority, deduct £1 for each deduction and pay the remaining amount to your employee

2.3.18 What if an employee is not paid at regular intervals?

If you pay your employee at irregular intervals, you should divide their attachable earnings by the number of calendar days since the last payment. You should then use Table 3 to work out the appropriate daily deductions, and multiply this figure by the number of days in the period.

Example 4: You have received a CTAE0 and you pay your employee at irregular intervals.

- calculate your employee's attachable earnings for each pay period e.g. £270 (1 April to 9 April); £1,100 (10 April to 20 April); £500 (21 April to 30 April)
- calculate the daily rate of attachable earnings for each pay period, i.e. £270 divided by 9 = £30.00
1,100 divided by 11 = £100.00 and
500 divided by 10 = £50
- identify the correct percentage deduction rate from Table 3 (Annex E), i.e. 7%; 17% on the first £72 and 50% thereafter; and 12% respectively.
- calculate the daily deduction rate i.e. $£30 \times 0.07 = £2.10$;
 $£72 \times 0.17 + 28 \times 0.50 = £26.24$; and
 $£50 \times 0.12 = £6.00$ respectively
- multiply by the number of days in the pay period to find the total deduction, i.e.
 $9 \times £2.10 = £18.90$;
 $11 \times £26.24 = £288.64$; and
 $10 \times £6.00 = £60.00$ respectively

2.3.19 What if an employee receives both regular and irregular payments?

You should apply the appropriate table to regular payments made to your employee. If you also make an irregular payment to your employee but not on the same pay day as the regular payments, you should deduct 20% of the irregular payment.

Example 5: You have received a CTAE0. You pay your employee their regular monthly salary on 30 November and a Christmas bonus payment on 10 December.

- calculate your employee's attachable earnings e.g. £1,000 for the November salary and £200 for the Christmas bonus
- identify the correct percentage deduction rate from Table 2 (Annex E) for the monthly salary payment, i.e. exceeding £900 but not exceeding £1,420 = 12%
- calculate the deduction on the monthly salary, i.e. $0.12 \times £1,000 = £120$
- calculate the deduction on the Christmas bonus, i.e. $0.20 \times £200 = £40$

2.3.20 What if a regular and irregular payment to an employee fall on the same day?

If both a regular payment and an irregular payment fall due on the same pay-day, you should combine the two payments for the purpose of calculating a deduction and treat the combined payment as if it were a single payment made on the regular pay-day, applying the appropriate table to the whole sum.

Example 6: Facts as in Example 5 above except now the Christmas bonus is paid on 20 December at the same time as the regular monthly salaries for December

- calculate your employee's attachable earnings e.g. £1,200 for the December salary and Christmas bonus together
- identify the correct percentage deduction rate from Table 2 (Annex E) for the monthly salary payment i.e. exceeding £900 but not exceeding £1,420 = 12%
- calculate the deduction i.e. $0.12 \times £1,200 = £144$

2.3.21 How should advances for holiday pay be treated?

The amount to deduct is the aggregate of a) the amount that would have been deducted on the pay day if there had been no advance of pay; and b) the amounts that would have been deducted if the amounts advanced had been paid on the normal pay day or days.

Example 7: You have received a CTAE0. In addition to their weekly salary you are paying your employee two weeks' holiday pay in advance.

- calculate your employee's attachable earnings excluding the advance, e.g. one week at £200
- apply from Table I (Annex E) the appropriate percentage deduction rate i.e. exceeding £185 but not exceeding £225 = 7%
- calculate the deduction, i.e. $0.07 \times £200 = £14$
- calculate your employee's attachable earnings relating to the advance, e.g. £400 for two weeks
- divide this total equally between the future pay periods for which the advance is given, i.e. £400 divided by 2 = £200
- apply from Table I (Annex E) the appropriate percentage deduction rate i.e. exceeding £185 but not exceeding £225 = 7%
- calculate the deduction, i.e. $0.07 \times £200 = £14$
- multiply the weekly deduction by the number of weeks in the advance pay period, i.e. $£14 \times 2 = £28$
- pay over to the local authority the total deduction, i.e. $£14 + £28 = £42$
- Note that since you are making a deduction from a single payment, only £1 may be deducted for administration costs

2.3.22 How should other loans be treated?

Loans made, for example, for the purchase of a season ticket or for helping with moving house, are not advances of pay and should not be counted as earnings.

The way that repayments of such loans are treated in calculating a deduction depends on the date that the CTAE0 was made:

- for calculating a deduction under a CTAE0 made on or after 1 April 1995, the AEO deduction should be based on net earnings before any loan repayment
- for CTAE0s made before 1 April 1995, net earnings should be reduced by the amount of the repayment made to the employer.

Further Information

2.3.23 Further help and advice

You should contact the local authority that issued the CTAE0.

Annex A: Example of an Attachment of Earnings Order

[Name of billing authority]

Regulation 37 of the Council Tax

(Administration and Enforcement) Regulations 1992

[Debtor's name and address]

[Payroll/Works No.]

[Billing authority's reference]

To any person who has in his employment the person named above.

On [date] the [name] magistrates' court made a liability order under regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992 against the person named above.

Under regulation 37 the authority which applied for the liability order, [name of authority] may make an attachment of earnings order to secure the payment of the appropriate amount, which under regulation 37 (1A) is the aggregate of -

- (a) any outstanding sum which is or forms part of the amount in respect of which the liability order was made, and
- (b) such additional sums and costs as are specified in regulation 37 (1A) (b).

Calculated in accordance with regulation 37 (1A) the appropriate amount in relation to this order is £[amount].

YOU ARE ORDERED by [name of billing authority] to make deductions from the net earnings (as defined in regulation 32 of those Regulations) of the person named above at the times and at the rate specified in regulation 38 of those Regulations. The first such deduction shall be made as soon as reasonably practicable after the service on you of a copy of this order. A copy of regulations 32 and 38, together with regulations 39 to 42 and Schedule 4, are set out at the end of this order.

YOU ARE ALSO ORDERED to pay each sum deducted to [name of billing authority and address for payments] within the period of 19 days beginning on the last day of the month in which the deduction was made.

Dated , 20

Proper officer of the authority

*Indorsement on copy sent to person appearing to have the debtor in his employment

It appears to [name of billing authority] that you have the above-named debtor in your employment. You must notify [name of billing authority] in writing within 14 days of the date of service on you of this copy of the order if you do not have the debtor in your employment. You must also notify [name of billing authority] in writing within 14 days of the day on which the debtor leaves your employment. Failure to do so may render you liable to a fine.

*Indorsement on copy sent to debtor

This is a copy of an attachment of earnings order served on your employer. If you leave his employment or become employed or re-employed you must notify [name of billing authority] in writing within 14 days, giving the particulars specified in regulation 40(1) of the Regulations mentioned in the order. Failure to do so may render you liable to a fine.

Italics indicate words or figures to be inserted.

*Delete whichever indorsement is inapplicable.

Annex B: Legislation

The powers to make Council Tax Attachment of Earnings Orders are found in the Local Government Finance Act 1992.

The rules under which Council Tax Attachment of Earnings Orders should be administered are set out in the Council Tax (Administration and Enforcement) Regulations 1992, SI No. 1992/613. These have however been amended on a number of occasions, most significantly by SI No. 1998/295 to update the deduction tables for orders made on or after 1 October 1998 and SI No. 2006/3395 to update the deduction tables for orders made on or after 1 April 2007. SI No. 2007/501 corrects a typographical error in SI No. 2006/3395 and makes a minor amendment to the form of the attachment of Earnings Order.

Annex C: Deduction tables for CTAEOs made before 1 October 1998

Table 1 - Deductions from weekly earnings

| (1) Attachable earnings | (2) Deduction rate (percentage) |
|---------------------------------------|---|
| Not exceeding £35 | 0 |
| Exceeding £35 but not exceeding £65 | 3 |
| Exceeding £65 but not exceeding £90 | 5 |
| Exceeding £90 but not exceeding £110 | 7 |
| Exceeding £110 but not exceeding £175 | 12 |
| Exceeding £175 but not exceeding £250 | 17 |
| Exceeding £250 | 17 in respect of the first £370 and 50% in respect of the remainder |

Table 2 - Deductions from monthly earnings

| (1) Attachable earnings | (2) Deduction rate (percentage) |
|--|--|
| Not exceeding £152 | 0 |
| Exceeding £152 but not exceeding £260 | 3 |
| Exceeding £260 but not exceeding £360 | 5 |
| Exceeding £360 but not exceeding £440 | 7 |
| Exceeding £440 but not exceeding £700 | 12 |
| Exceeding £700 but not exceeding £1000 | 17 |
| Exceeding £1000 | 17 in respect of the first £1000 and 50% in respect of the remainder |

Table 3 - Deductions from daily earnings

| (1) Attachable earnings | (2) Deduction rate (percentage) |
|-------------------------------------|--|
| Not exceeding £5 | 0 |
| Exceeding £5 but not exceeding £9 | 3 |
| Exceeding £9 but not exceeding £13 | 5 |
| Exceeding £13 but not exceeding £16 | 7 |
| Exceeding £16 but not exceeding £25 | 12 |
| Exceeding £25 but not exceeding £36 | 17 |
| Exceeding £36 | 17 in respect of the first £36 and 50% in respect of the remainder |

Annex D: Deduction tables for CTAEOs made between 1 October 1998 and 31 March 2007

Table 1 - Deductions from weekly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---------------------------------------|---|
| Not exceeding £55 | 0 |
| Exceeding £55 but not exceeding £100 | 3 |
| Exceeding £100 but not exceeding £135 | 5 |
| Exceeding £135 but not exceeding £165 | 7 |
| Exceeding £165 but not exceeding £260 | 12 |
| Exceeding £260 but not exceeding £370 | 17 |
| Exceeding £370 | 17 in respect of the first £370 and 50% in respect of the remainder |

Table 2 - Deductions from monthly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---|---|
| Not exceeding £220 | 0 |
| Exceeding £220 but not exceeding £400 | 3 |
| Exceeding £400 but not exceeding £540 | 5 |
| Exceeding £540 but not exceeding £660 | 7 |
| Exceeding £660 but not exceeding £1,040 | 12 |
| Exceeding £1,040 but not exceeding £1,480 | 17 |
| Exceeding £1,480 | 17 in respect of the first £1,480 and 50% in respect of the remainder |

Table 3 - Deductions based on daily earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|-------------------------------------|--|
| Not exceeding £8 | 0 |
| Exceeding £8 but not exceeding £15 | 3 |
| Exceeding £15 but not exceeding £20 | 5 |
| Exceeding £20 but not exceeding £24 | 7 |
| Exceeding £24 but not exceeding £38 | 12 |
| Exceeding £38 but not exceeding £53 | 17 |
| Exceeding £53 | 17 in respect of the first £53 and 50% in respect of the remainder |

Annex E: Deduction tables for CTAEOs made on or after 1 April 2007

Table 1 - Deductions from weekly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---------------------------------------|---|
| Not exceeding £75 | 0 |
| Exceeding £75 but not exceeding £135 | 3 |
| Exceeding £135 but not exceeding £185 | 5 |
| Exceeding £185 but not exceeding £225 | 7 |
| Exceeding £225 but not exceeding £355 | 12 |
| Exceeding £355 but not exceeding £505 | 17 |
| Exceeding £505 | 17 in respect of the first £505 and 50% in respect of the remainder |

Table 2 - Deductions from monthly earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|---|---|
| Not exceeding £300 | 0 |
| Exceeding £300 but not exceeding £550 | 3 |
| Exceeding £550 but not exceeding £740 | 5 |
| Exceeding £740 but not exceeding £900 | 7 |
| Exceeding £900 but not exceeding £1,420 | 12 |
| Exceeding £1,420 but not exceeding £2,020 | 17 |
| Exceeding £2,020 | 17 in respect of the first £2,020 and 50% in respect of the remainder |

Table 3 - Deductions based on daily earnings

| (1) Net earnings | (2) Deduction rate (percentage) |
|-------------------------------------|--|
| Not exceeding £11 | 0 |
| Exceeding £11 but not exceeding £20 | 3 |
| Exceeding £20 but not exceeding £27 | 5 |
| Exceeding £27 but not exceeding £33 | 7 |
| Exceeding £33 but not exceeding £52 | 12 |
| Exceeding £52 but not exceeding £72 | 17 |
| Exceeding £72 | 17 in respect of the first £72 and 50% in respect of the remainder |

2 Attachment of Earnings

2.4 Attachment of Earnings (Northern Ireland)

- 2.4.1 Introduction
- 2.4.2 How to operate an Attachment of Earnings Order (AEO)
- 2.4.3 Making deductions
- 2.4.4 Your expenses
- 2.4.5 Informing your employee of deductions
- 2.4.6 Making payments
- 2.4.7 What do you do if you receive more than one AEO or another type of order for the same employee?
- 2.4.8 Can the office or court change the order?
- 2.4.9 Order discharged or ceased
- 2.4.10 Your employee leaves your employment
- 2.4.11 Your obligations
- 2.4.12 Your employee's obligations
- 2.4.13 Legislation

2.4.1 Introduction

Attachment of Earnings Orders (AEOs) can be made in Northern Ireland to collect unpaid:

- maintenance (High Court, or any other court in the United Kingdom with power to enforce maintenance orders)
- civil judgment debts (the Enforcement of Judgments Office ('the EJO')).

2.4.2 How to operate an Attachment of Earnings Order (AEO)

An AEO tells you:

- the total debt owed by your employee (unless the order is for ongoing maintenance)
- how often you should make a deduction (usually weekly or monthly)
- the amount you should usually deduct each week or month (the normal deduction rate (NDR) (see paragraph 2.1.21)) and
- the amount below which you must not make a deduction (the protected earnings rate (PER) (see paragraph 2.1.22)).

AEOs can only be applied to certain types of earning, known as attachable earnings (see Figure 2 for a quick guide).

On each pay day you should:

- calculate your employee's attachable earnings
- set aside your employee's protected earnings
- deduct (if possible) the amount specified in the order
- send the deduction to the address stated in the order and
- pay the remainder (if there are no other deductions to be made) to you employee.

This procedure is set out in more detail in paragraphs 2.1.24 – 33 with worked examples. You should read section 7 before making a deduction.

2.4.3 Making deductions

You should make deductions at the intervals laid down in the order from your employee's attachable earnings until the total debt owed by your employee is reached. If you receive an order for ongoing maintenance, you should make deductions until the court tells you to stop.

The order comes into force on the day you receive it. You should begin to make deductions on the first pay-day after you receive the order and on each future pay-day. Failure to do so may result in you being fined. However, you cannot be fined for failing to make a deduction on the first pay-day if that falls within seven days of the date you receive the order.

2.4.4 Your expenses

Each time you make a deduction, you may deduct £1 from your employee's earnings towards your administrative costs for operating the order even if this reduces your employee's income below the protected earnings rate. You cannot make this charge if you do not make a deduction.

2.4.5 Informing your employee of deductions

You must inform your employee in writing about each deduction (including the amount you can deduct towards your costs) when he is given his pay statement. If no pay statements are usually given, you should inform him in writing as soon as possible after making the deduction.

2.4.6 Making payments

The order will tell you how you can pay. You should send the deduction to the EJO or court as soon as possible, stating the name of the employee and the claim number or EJO reference number. This information is on the copy order sent by the EJO or court.

If you are making payments for two or more orders issued by the EJO or by the same court, you can pay by sending a lump sum cheque covering deductions for more than one employee. You must send a paper schedule setting out the details of each payment you include.

2.4.7 What do you do if you receive more than one AEO or another type of order for the same employee?

You will find help in section 10 on what to do if you receive more than one order for the same employee.

2.4.8 Can the office or court change the order?

The EJO or court may change (or 'vary') the NDR or the PER at any time. You will be sent a copy of the varied order. If possible, you should comply with the new order from the first pay-day after receiving it. But you will not be fined for failing to comply if the pay-day falls within a week of receiving the order.

2.4.9 Order discharged or ceased

The EJO or court will notify you in writing when an order has been paid in full, is discharged (cancelled), or ceases to have effect. You must stop deductions as soon as possible and certainly within **seven** days of receiving the notification. Any money deducted should be sent to the EJO or court at once.

Note: You should check the amount of the final deduction as it may be less than the usual deduction.

2.4.10 Your employee leaves your employment

If your employee leaves your employment, the AEO will lapse from the pay day coinciding with or following termination of employment.

2.4.11 Your obligations

You must:

- give a signed statement of an employee's earnings if the EJO or court requires you to do so
- write to the EJO or court within **ten** days if you receive an order and you do not employ the person named in it
- take all reasonable steps to comply with an order or a varied order
- write to the EJO or court within **ten** days (a telephone call is not sufficient) if the employee leaves your employment. If you know the name and address of his new employer, it will be helpful to give the office or court this information or
- write to the EJO or court within **seven** days if you learn that a new employee has an existing order against him.

Note: You or your employee can make an application to the EJO or court at any time to settle a dispute about the operation of an order, or to resolve any uncertainty about whether particular earnings are attachable.

2.4.12 Your employee's obligations

Before an order is made, your employee has an opportunity to put his case to the court and he will know that the order has been made. He may at any time apply to the EJO or court for its discharge or variation, and if he complains to you about the order, you can point this out to him. If he does not understand how the order works, the staff at the EJO or court should be able to explain it to him or tell him where he can get more information.

Your employee must write to the EJO or court within **seven** days if he has left your employment, and within **seven** days of starting a new job, giving the name and address of his new employer, and details of his net earnings or anticipated net earnings.

Failure to comply or deliberately giving false information about any of these matters is an offence. It could lead to you or your employee being fined or even imprisoned.

2.4.13 Legislation

The relevant legislation is:

The Judgments Enforcement (Northern Ireland) Order and Rules 1981; and

The Magistrates' Courts (Northern Ireland) Order 1981.

3 Arrestment of Earnings (Scotland)

- 3.1 Earnings Arrestments (EAs), Current Maintenance Arrestments (CMAs), Conjoined Arrestment Orders (CAOs)
 - 3.2 Debt Arrangement Scheme: the effect on an employer
 - 3.3 How to operate an arrestment
 - 3.4 Your expenses
 - 3.5 Making payments
 - 3.6 What do you do if you receive another type of arrestment schedule for the same employee
 - 3.7 Variation of an arrestment
 - 3.8 Recall of an arrestment
 - 3.9 Your employee leaves your employment
 - 3.10 Your employee's objections
 - 3.11 Your obligations
 - 3.12 Failure to make deductions
 - 3.13 How to calculate a deduction
 - 3.14 Calculating deductions for an Earnings Arrestment
 - 3.15 Calculating deductions for a Current Maintenance Arrestment
 - 3.16 Calculating deductions when operating both an EA and a CMA
 - 3.17 Conjoined Arrestment Orders
 - 3.18 How to calculate deductions where all the debts in the CAO are fines or civil debts
 - 3.19 How to calculate deductions where all the debts in the CAO are maintenance debts
 - 3.20 How to calculate deductions where the debts in the CAO are a combination of fines, civil debts and maintenance
 - 3.21 Holiday pay in advance
- Annex A: Deductions from weekly earnings (Table A)
- Annex B: Deductions from monthly earnings (Table B)
- Annex C: Deductions based on daily earnings (Table C)
- Annex D: Legislation

3.1 Earnings Arrestments, Current Maintenance Arrestments , Conjoined Arrestment Orders

The system for arresting earnings in Scotland is a bit different from attaching earnings in England and Wales. Deductions from earnings for payment of a civil debt or fine (including unpaid community charge or council tax) are called an Earnings Arrestment (EA) in Scotland. A creditor can enforce earnings deductions by arrestment and current maintenance arrestment (CMA) on the strength of their warrant without having to go back to the court.

The Debtors (Scotland) Act 1987 defines the types of earning to which an arrestment order can be applied (see Figure 2 for a quick guide and Appendix D for fuller details).

The 1987 Act introduced the current system in Scotland and it is considered a very effective enforcement method by creditors. There are three types of arrestment of earnings.

- EAs require the employer to make a deduction from the debtor's earnings every pay day, and pay the deduction to the arresting creditor. A creditor may enforce payment of more than one debt payable to him by the same debtor by means of a single EA .
- Deductions for payment of maintenance (aliment, periodical allowance and similar) as it falls due is called a Current Maintenance Arrestment (CMA). The 1987 Act introduced this as a simpler and less expensive solution for the collection and enforcement of maintenance payments due to spouses (past and present) and children. The employer makes a deduction calculated on the maintenance due every pay day and pays it to the arresting maintenance creditor.
- Conjoined Arrestment Orders (CAO) allow two or more creditors to share the proceeds of a diligence against earnings. The employer pays the sum deducted to the sheriff clerk of the court that grants the order, and the court divides that payment amongst the creditors conjoined.

You can operate one EA and one CMA together at the same time against the same employee's earnings. But if an employee owes two different creditors two or more debts of the same type, or more than two debts of different types, and his creditors apply for an arrestment order, the court will issue a CAO. This enables different creditors to enforce more than one arrestment of the same type against the earnings of the same employee.

While a CAO is in force, no EA, CMA or further CAO can be made against your employee's earnings (see paragraph 3.18).

The Bankruptcy and Diligence etc. (Scotland) Act 2007 has modernised the whole range of diligence and the opportunity has been taken to amend the system to make arresting earnings in Scotland work even better. From 1st April 2008 the Act has:

- given employers a formula for calculating equal shares when deducting an earnings arrestment and current maintenance arrestment together, where there are not enough earnings to satisfy both
- clarified which court has jurisdiction to deal with a conjoined arrestment order
- repealed the previous seamen's wages exemption
- changed the way in which deductions from holiday pay, paid in advance, should be treated.
- introduced reporting requirement to keep the creditor informed.

3.2 Debt Arrangement Scheme: the effect on an employer

The Debt Arrangement Scheme (DAS) was introduced in Scotland at the end of 2004 to help and protect debtors who have multiple debts and who have surplus income from which payments can be made on a regular basis.

Under DAS, a single regular payment is made to an approved payments distributor.

If your employee has been accepted into a Debt Payment Programme (DPP) under DAS and keeps to the agreed payments, his or her creditors cannot carry out enforcement action against that employee or make the employee bankrupt. Details of the scheme and guidance for the debtor are available through the following website links:

www.moneyscotland.gov.uk and

www.scotland.gov.uk/Publications/2005/09/15105247/52488

There are two main effects on you as an employer while a Debt Arrangement Scheme is in force:

- Section 35 of the Debt Arrangement Scheme (Scotland) Regulations 2004 provides that once a DPP has been approved, there will be a stop on any current arrestment including a conjoined arrestment, in force, including that of earnings. You are **legally required** to stop deductions if you receive a DAS form 7.
- You must make payments on behalf of the debtor to a payments distributor if you receive a mandate (DAS form 6).

Guidance for employers on DAS and these forms is available on the '[moneyscotland](http://www.moneyscotland.gov.uk)' website (www.moneyscotland.gov.uk).

3.3 How to operate an arrestment

An EA or a CMA comes into force on the day that you receive the arrestment schedule. A CAO comes into effect 7 days after a copy of the order has been served on you. They remain in force until the debt is paid, your employee leaves your employment, the creditor or the court directs otherwise or you receive a DAS Form 6 or 7 which stops any current arrestment, including EAs. You will not be penalised if you do not apply an EA or a CMA on a pay-day occurring within seven days of receipt of the schedule or order. However, you must make a deduction on the next pay-day.

On each-pay day while an order is in force you should:

- deduct a certain sum calculated from deduction tables (EA), in Schedule 2 of the 1987 Act, or specified in the order (CMA or CAO) from your employee's arrestable earnings. See Figure 2 (page 5) for a quick guide on the types of earnings from which you must make a deduction.
- send the deduction to the address stated in the schedule or order; and
- pay the remainder to your employee.

This procedure, including information on how to treat holiday pay, is set out in more detail in paragraphs 3.13 – 3.21 with worked examples. You should read these examples before making a deduction.

3.4 Your expenses

Each time you make a payment you may deduct £1 from your employee's earnings towards your administrative costs for operating the order.

3.5 Making payments

If you are operating an EA or CMA, you should pay the amount deducted to the creditor named on the arrestment schedule as soon as is reasonably practicable.

If you are making deductions under a CAO, you should send the deduction to the clerk of the court that made the order. The court will divide the money among the creditors. You should continue to make deductions until the total debt is paid or the court tells you to stop.

The court or creditor will give you details about methods of payment.

3.6 What do you do if you receive another arrestment schedule for the same employee?

You will find help in Chapter 7.7 on what to do if you receive an order of another type for the same employee.

3.7 Variation of an arrestment

Neither a sheriff nor a creditor can vary an EA or a CMA. The sheriff may vary a CAO when a creditor informs the clerk of court that enforcement of their debt should cease because their debt has been satisfied. The varied order comes into force seven days after you receive a copy of it. You must apply the varied order to your employee's earnings on the first pay day that falls after this seven day period.

3.8 Recall of an arrestment

An EA or CMA can be recalled (cancelled) by:

- the creditor, who must notify you in writing as soon as the debt is paid, or if he decides that he no longer wishes to recover the debt by an arrestment.
- the sheriff, on application by you or your employee that the arrestment is no longer valid, or by a CAO
- you must not continue to apply any existing EA or CMA against your employee's earnings after the CAO comes into force (Note: a DEO can still be operated with a CAO).
- the approval of a debt payment programme under the Debt Arrangement Scheme. This also recalls a CAO. The DAS Administrator will also notify you on a form 7.
- a DAS Administrator under the Debt Arrangement Scheme (Scotland) Regulations 2004.
- an award of bankruptcy (sequestration) against the debtor. This also recalls a CAO.

3.9 Your employee leaves your employment

If your employee leaves your employment, the arrestment will lapse from the pay day coinciding with or following termination of employment. If you are operating an EA or CMA, you must notify the creditor as soon as possible. If you are operating a CAO, you must notify the sheriff as soon as possible.

3.10 Your employee's objections

If he has already paid the debt, your employee can object to an EA by making an application to the court.

He can object to a CMA if:

- he has not defaulted on maintenance payments
- he has not been told that a current maintenance arrestment has been made against him
- four weeks have not elapsed since notification that a current maintenance arrestment has been made against him
- less than three instalments of maintenance remain unpaid.

3.11 Your obligations

You must take all reasonable steps to comply with an EA, a CMA or a CAO.

If you are already operating an EA or a CMA of the same type or a CAO, you must give the relevant information to a creditor seeking to recover his debt by means of an EA or CMA.

You should inform the **creditor**, or the sheriff clerk where relevant, as soon as possible:

- if you receive an EA, a CMA or a CAO and you do not employ the named person

If you receive an EA, a CMA or a CAO, you must send specified information to the **creditor** (or, in the case of a CAO, the sheriff clerk). You must send information as soon as reasonably practicable after receipt of the schedule or order;

AND

If you are **operating** an EA, a CMA or a CAO, provided the debt has not been extinguished, you must send to the creditor (or, in the case of a CAO, the sheriff clerk) as soon as reasonably practicable after the later of:

- (i) 6 April next following receipt of the EA, CMA or CAO; or
- (ii) the day falling 6 months after receipt of the EA, CMA or CAO;

AND

each 6 April thereafter.

The information required is:

- how the debtor (your employee) is paid (whether weekly, fortnightly, monthly or otherwise)
- the date of the debtor's pay-day next following the day you send the information
- the sum to be deducted on that pay-day and the net earnings from which it is so deducted

- if the debtor ceases, for whatever reason, to be employed by you, notice of that fact, if known, the name and address of any new employer.

If you do not comply, without reasonable excuse, to advise the creditor that the debtor is no longer employed by you, the creditor may apply to the sheriff for an order requiring you to provide such information as is known and to pay a sum to the creditor. This sum will not be recoverable from the debtor.

You may appeal such an order within 14 days of it having been made. You are advised to seek independent legal advice at this stage.

You must send to the **debtor (your employee)**, as soon as reasonably practicable:

- A copy of any EA or CMA schedule that is sent to you; and
- A copy of any information sent to the creditor under the requirements listed above.

You must also notify the debtor (**your employee**), as soon as reasonably practicable:

- If you receive an EA, a CMA or a CAO, the date on which the first deduction will be made; and
- the sum to be deducted.

Note: You cannot object to an order being made or ask the court to recall it, unless you are someone other than the debtor's employer. You can make an application to the sheriff at any time to settle a dispute about the operation of an order.

3.12 Failure to make deductions

If you fail to comply with an EA, CMA or CAO, you may have to pay the creditor any sum that you would have deducted if you had complied. You cannot recover any of these sums from your employee.

Where you are operating a CAO, the court may issue a 'warrant of diligence' against you to recover any sums that you have failed to deduct. You, and not your employee, will have to pay this.

3.13 How to calculate a deduction

EAs, CMAs and CAOs can only be applied to certain categories of earnings, referred to as arrestable earnings. You will need to calculate your employee's arrestable earnings before you make the deduction specified in the schedule or CAO.

The method you use to calculate how much you should deduct depends on the type of arrestment. If you are sent:

- an EA, you will also be sent a copy of the tables in annexes A, B and C (Schedule 2 of the Debtors (Scotland) Act 1987). Paragraph 3.14 explains how to use the tables to calculate deductions under an EA.
- a CMA, you must use the method described in paragraph 3.15 (this does not involve the use of tables). Paragraph 3.16 explains how to calculate deductions if you are operating both an EA and a CMA.
- a CAO, the method you use depends on how the order is made up (see paragraph 3.17 through to 3.20).

When new tables are issued, the employer is not under a legal obligation to apply the amended bands to existing orders unless he is requested to do so by way of the appropriate form. The employer may apply the amended bands if he chooses to.

3.14 Calculating deductions for an Earnings Arrestment

If you receive an Earnings Arrestment schedule, you should use the appropriate table, depending on whether you pay your employee on a weekly, monthly or daily basis, to find the band within which your employee’s arrestable earnings fall. The first column of each table lists a series of bands of arrestable earnings. The second column lists the fixed amount to be deducted which is applicable to that income band. You can therefore read across the amount you should deduct.

| | |
|---|--|
| Example 1: You pay your employee monthly and you have received an EA | |
| <ul style="list-style-type: none"> • calculate your employee’s arrestable earnings, e.g. £1088.48 • find the correct band for arrestable earnings i.e. exceeding £1010 but not exceeding £1090 • deduct and send to the EA creditor £120 • deduct £1 if you wish from the remainder for making the deduction • pay your employee the remainder, i.e. £967.48 | |

3.15 Calculating deductions for a Current Maintenance Arrestment

A CMA specifies the maintenance payable by your employee as a daily rate. You should always apply a ‘protected earnings rate (PER)’ of £12 per day to your employee’s earnings. You calculate the amount you should deduct by:

- finding the daily arrestable earnings
- subtracting the daily protected earnings
- multiplying the result or, if it is less, the daily maintenance rate specified in the Arrestment by the number of days in the pay period covered by the CMA.

| | |
|---|--------|
| Example 2: You pay your employee monthly and you receive a CMA. | |
| Minimum PER = £12 per day; | |
| Daily maintenance rate = £11; pay period 1-30 June | |
| calculate your employee’s arrestable earnings, e.g. £716.70 | |
| find the daily arrestable earnings, i.e. £716.70 divided by 30 = £23.89 | £23.89 |
| subtract the PER, i.e. £23.89 - £12 = £11.89 | £11.89 |
| This means that the daily maintenance rate of £11 can be met | |
| Now: | |
| send to the CMA creditor the maintenance deduction, | |
| i.e. £11 per day x 30 days = £330 | £330 |
| This leaves £386.70 | |
| deduct £1 if you wish from the remainder for making a deduction | |
| pay your employee the balance of his earnings, i.e. £385.70 | |

Example 3: You pay your employee monthly. The pay period is 1-30 June and you are operating a CMA that ceases on 17 June.

| | |
|---|---------|
| PER = £12 per day | |
| Daily maintenance rate imposed by court order = £15 | |
| calculate your employee's arrestable earnings, e.g. £716.70 | |
| find the daily arrestable earnings, i.e. £716.70 divided by 30 = £23.89 | £23.89 |
| subtract the PER, i.e. £23.89 - £12 = £11.89 | £11.89 |
| This means that only a daily maintenance rate of £11.89 can be met | |
| Now: | |
| send to the CMA creditor the maintenance deduction, i.e. £11.89 per day x 17 days = £202.13 | £202.13 |
| This leaves £514.57 | |
| deduct £1 if you wish from the remainder for making a deduction | |
| pay your employee the balance of his earnings, i.e. £513.57 | |

Note: If a CMA covers part of a pay period, the deduction must be made only from the earnings due for that part of the pay period. You must therefore calculate the daily arrestable earnings for the pay period and subtract the daily protected earnings in order to calculate whether the full daily maintenance rate can be deducted.

3.16 Calculating deductions when operating both an EA and a CMA

An EA and a CMA can be applied to an employee's earnings at the same time.

From 1st April 2008 the Bankruptcy and Diligence etc. (Scotland) Act 2007 ("the 2007 Act") removed the preference that an EA had over a CMA. Both must now share the arrestable earnings equally. You should.

- calculate the sum that is required to be deducted under the EA and under the CMA separately;
- if on any-pay day, the total of the two figures calculated above is greater than the net arrestable earnings of the debtor, you must use the following formula to determine the amount to be deducted and paid to each creditor.

The formula:

The employer shall -

For the purpose of an EA, deduct the sum equal to -

$$N \times \frac{E}{S}; \text{ and}$$

For the purpose of a CMA, deduct the sum equal to -

$$N \times \frac{C}{S}; \text{ and}$$

- N is the amount of any net earnings in so far as they exceed the sum mentioned in subsection (2)(b) of section 53 of the 1987 Act (currently £12 per day) for the number of days mentioned in subsection (2)(a) of that section (namely, the number of days (i) since the last pay-day when a deduction was made in respect of the arrestment; or (ii) if there was no such pay-day, since the date of execution of the arrestment;
- E is the sum which the employer is required to deduct under the EA;
- C is the sum which the employer is required to deduct under the CMA; and
- S is the total of E and C.

| Example 4: You pay your employee monthly. The pay period is 1-30 June and you are operating an EA and a CMA with a daily maintenance rate of £13. | |
|--|---------|
| PER = £12 per day. | |
| Step 1: Calculate N | |
| calculate the employee's arrestable earnings, e.g. £730 | |
| calculate the daily arrestable earnings, e.g. $£730/30 = £24.33$ | |
| subtract the PER, i.e. $£24.33 - £12 = £12.33$ | |
| multiply by the number of days i.e. $£12.33 \times 30 = £369.90$ | £369.90 |
| Step 2: Calculate E | |
| find the correct band for arrestable earnings, i.e. exceeding £670 but not exceeding £730 | |
| E = £56 | £56.00 |
| Step 3: Calculate C | |
| C is whichever is the lesser of; | |
| (i) The daily maintenance rate multiplied by the number of days i.e. $£13 \times 30 = £390$; and | |
| (ii) Net daily earnings multiplied by the number of days, i.e. $£12.33 \times 30 = £369.90$, | |
| therefore, C = £369.90 | £369.90 |
| hence, $S = E + C = £56 + £369.90 = £425.90$ | £425.90 |
| as N is less than S, the formula must be used | |
| The EA creditor should be sent $£369.90 \times (56/425.90) = £48.6367$ | £48.64 |
| and round to the nearest penny | |
| The CMA creditor should be sent $£369.90 \times (369.90/425.90) = £321.2632$ and round to the nearest penny | £321.26 |
| This leaves £360.10 | |
| Deduct £1 per payment to each creditor if you wish from the remainder for your costs. | |
| Pay your employee the remainder, i.e. £358.10 | |

Example 5: You pay your employee weekly. The pay period is 8-14 June and you are operating an EA and a CMA with a daily maintenance rate of £15.

| | |
|---|---------|
| PER = £12 per day. | |
| Step 1: Calculate N | |
| calculate your employee's arrestable earnings, e.g. £211 | |
| calculate the daily arrestable earnings, i.e. $£211/7 = £30.14$ | |
| subtract the PER i.e. $£30.14 - £12 = £18.14$ | |
| multiply by the number of days i.e. $£18.14 \times 7 = £126.98$ | £126.98 |
| Step 2: Calculate E | |
| find the correct band for arrestable earnings, i.e. exceeding £210 but not exceeding £230 | |
| E = £25 | £25.00 |
| Step 3: Calculate C | |
| C is whichever is the lesser of; | |
| (i) The daily maintenance rate multiplied by the number of days, i.e. $£15 \times 7 = £105$; and | |
| (ii) Net daily earnings multiplied by the number of days, i.e. $£18.14 \times 7 = £126.98$, | |
| therefore, C = £105 | £105.00 |
| hence, S = E + C = $£25 + £105 = £130$ | £130.00 |
| as N is less than S, the formula must be used | |
| The EA creditor should be sent $£126.98 \times (25/130) = £24.4192$ | £24.42 |
| and round to the nearest penny | |
| The CMA creditor should be sent $£126.98 \times (105/130) = £102.5607$ | £102.56 |
| and round to the nearest penny | |
| This leaves £84.02 | |
| deduct £1 per payment if you wish from the remainder for your costs | |
| pay your employee the remainder, i.e. £82.02 | |

3.17 Conjoined Arrestment Orders

If you are ordered to apply a CAO to an employee's earnings, and a non-maintenance debt is being recovered within the CAO, the order will specify:

- the total amount owing
- where maintenance is to be enforced under the CAO
- the daily rate payable by your employee.

How you calculate the deduction will depend on the type of debts included in the order.

Note: You should send any deductions made under a CAO to the court that made the order.

3.18 How to calculate deductions where all the debts in the CAO are fines or civil debts

If all the debts in the CAO are fines or civil debts, you should treat them as though they were just one debt (as with an EA) and use the appropriate table, depending on how you pay your employee, to calculate how much you should deduct.

3.19 How to calculate deductions where all the debts in the CAO are maintenance debts

If all the debts in the CAO are for maintenance, you should:

- find the daily arrestable earnings
- subtract the daily protected earnings to find out whether you can deduct the combined daily maintenance rates (and, if not, how much you can deduct)
- multiply the combined daily maintenance rates or the available daily rate, whichever is the lesser, by the number of days in the pay period covered by the CMA
- pay this amount to the court; and
- deduct £1 if you wish from the remainder for making a deduction, and pay the remainder to your employee.

Example 6: You pay your employee monthly. 3 CMAs have been conjoined. Daily maintenance rates have been set for them of £8, £7 and £6 respectively. PER - £12 per day. The pay period is 1-31 July.

| | |
|--|---------|
| calculate your employee's arrestable earnings, e.g. £930 | |
| find the daily arrestable earnings, i.e. £930 divided by 31 = £30 | £30.00 |
| subtract PER, i.e. £30 - £12 = £18 | £18.00 |
| This means that the combined daily deduction rate of (£8 + £7 + £6 = £21) cannot be met. | |
| Now: | |
| send to the court the combined maintenance deductions, i.e. £18 x 31 days = £558 | £558.00 |
| This leaves £372 | |
| deduct £1 if you wish from the remainder for making the deduction and pay the remainder to your employee, i.e. £371. | |

3.20 How to calculate deductions where the debts in the CAO are a combination of fines, civil debts and maintenance

If the CAO includes both non-maintenance and maintenance debts, you should apply a combination of the two methods. You should:

- use the appropriate tables to calculate the amount you should deduct for the non-maintenance debts (as with an EA)
- follow the steps set out in paragraph 3.19 to calculate the amount that should be deducted for the maintenance debts
- pay the court as much of the total of the amount deductible for the non-maintenance debts, and the amount due for the maintenance payments as is possible after you have taken account of the protected earnings.

Following the changes made by the 2007 Act, the total money paid to the sheriff court will be divided among the various creditors according to a new formula that operates in a similar way to that described in paragraph 3.16.

Example 7: You pay your employee monthly, and have received a CAO. 2 EA and 1 CMA have been conjoined. A daily maintenance rate of £9 has been set for the CMA. PER = £12 per day. The pay period is 1-31 August.

| | |
|---|---------|
| calculate your employee's arrestable earnings, e.g. £930 | |
| find the correct band, i.e. exceeding £870 but not exceeding £940 | |
| Sum that should be deducted under EA = £94 | |
| find the daily arrestable earnings, i.e. £930 divided by 31 = £30.00 | £30.00 |
| subtract PER, i.e. £30.00 - £12 = £18.00 | £18.00 |
| This means that the daily maintenance rate of £9 can be met. | |
| Now: | |
| calculate the maintenance deduction, i.e. £9 per day x 31 = £279 | £279.00 |
| send the total deduction (i.e. £94+£279 =£373) to the court | |
| This leaves £557 | |
| deduct £1 if you wish from the remainder for making the deduction and pay the remainder to your employee, i.e. £556 | |

3.21 Holiday pay in advance

From 1st April 2008, earnings paid in respect of holidays are to be treated separately from normal earnings for the purposes of calculating deductions. The amount to be deducted from normal earnings should be calculated and a separate calculation should then be carried out to determine the deduction to be made from the holiday pay. The holiday pay is treated broadly as though it were normal earnings relating to the pay periods during which the debtor is on holiday.

If you are operating an EA and you are paying your employee pay he would normally have received on that pay-day and holiday pay, you should:

- calculate the deduction that would have been made from normal pay if the holiday pay were not being paid;
- calculate separately the deduction(s) that would have been made from the holiday pay had it been paid on its normal pay-day(s); and
- add together any sum to be deducted from normal earnings and any sum to be deducted from holiday pay and deduct.

Note: As you are making one overall deduction, you may only deduct £1 from the remainder towards your administrative costs, and not £1 for each week in the pay period.

Example 8: Pay-day at the end of a week before 2 weeks' holiday; you pay your employee one normal week for which arrestable earnings are £175 and two holiday weeks for which arrestable earnings are £150 and £136.

| | |
|---|-----|
| calculate your employee's normal attachable earnings i.e. £175.00 | |
| find the correct band for arrestable earnings i.e. exceeding £160 but not exceeding £175 = £15.00 | |
| Sum to be deducted from normal earnings £15.00 | |
| Calculate the attachable earnings for the first holiday week i.e. £150 | |
| Find the correct band for arrestable earnings i.e. exceeding £145 but not exceeding £160 = £13.00 | |
| Calculate the attachable earnings for the second holiday week i.e. £136 | |
| find the correct band for arrestable earnings i.e. exceeding £135 but not exceeding £145 = £9.00 | |
| Add up the amounts due for each week | |
| £15 for the normal week | £15 |
| £13 for the first holiday week and | £13 |
| £9 for the second holiday week | £9 |
| Total £37 | £37 |

This method also applies to the EA part of any CAO; but where the CAO consists wholly or in part of a CMA, the method explained in paragraph 3.19 will still apply.

Annex A: Deductions from weekly earnings (Table A)

| (1) Net earnings | (2) Deduction (£) |
|---------------------------------------|--|
| Not exceeding £85 | Nil |
| Exceeding £85 but not exceeding £125 | 4 |
| Exceeding £125 but not exceeding £135 | 6 |
| Exceeding £135 but not exceeding £145 | 9 |
| Exceeding £145 but not exceeding £160 | 13 |
| Exceeding £160 but not exceeding £175 | 15 |
| Exceeding £175 but not exceeding £190 | 19 |
| Exceeding £190 but not exceeding £210 | 22 |
| Exceeding £210 but not exceeding £230 | 25 |
| Exceeding £230 but not exceeding £250 | 28 |
| Exceeding £250 but not exceeding £265 | 32 |
| Exceeding £265 but not exceeding £285 | 34 |
| Exceeding £285 but not exceeding £300 | 38 |
| Exceeding £300 but not exceeding £320 | 41 |
| Exceeding £320 but not exceeding £340 | 47 |
| Exceeding £340 but not exceeding £365 | 54 |
| Exceeding £365 but not exceeding £395 | 60 |
| Exceeding £395 but not exceeding £425 | 66 |
| Exceeding £425 but not exceeding £455 | 73 |
| Exceeding £455 but not exceeding £485 | 82 |
| Exceeding £485 but not exceeding £520 | 92 |
| Exceeding £520 but not exceeding £555 | 101 |
| Exceeding £555 but not exceeding £590 | 110 |
| Exceeding £590 but not exceeding £630 | 120 |
| Exceeding £630 but not exceeding £675 | 145 |
| Exceeding £675 but not exceeding £730 | 170 |
| Exceeding £730 but not exceeding £795 | 199 |
| Exceeding £795 but not exceeding £870 | 230 |
| Exceeding £870 but not exceeding £945 | 262 |
| Exceeding £945 | 262 in respect of the first £945 plus 50% in respect of the remainder |

Annex B: Deductions from monthly earnings (Table B)

| (1) Net earnings | (2) Deduction (£) |
|---|---|
| Not exceeding £370 | Nil |
| Exceeding £370 but not exceeding £490 | 15 |
| Exceeding £490 but not exceeding £550 | 25 |
| Exceeding £550 but not exceeding £610 | 34 |
| Exceeding £610 but not exceeding £670 | 45 |
| Exceeding £670 but not exceeding £730 | 56 |
| Exceeding £730 but not exceeding £800 | 69 |
| Exceeding £800 but not exceeding £870 | 82 |
| Exceeding £870 but not exceeding £940 | 94 |
| Exceeding £940 but not exceeding £1010 | 107 |
| Exceeding £1010 but not exceeding £1090 | 120 |
| Exceeding £1090 but not exceeding £1170 | 133 |
| Exceeding £1170 but not exceeding £1250 | 145 |
| Exceeding £1250 but not exceeding £1340 | 157 |
| Exceeding £1340 but not exceeding £1440 | 182 |
| Exceeding £1440 but not exceeding £1550 | 208 |
| Exceeding £1550 but not exceeding £1660 | 233 |
| Exceeding £1660 but not exceeding £1780 | 259 |
| Exceeding £1780 but not exceeding £1910 | 283 |
| Exceeding £1910 but not exceeding £2040 | 309 |
| Exceeding £2040 but not exceeding £2180 | 343 |
| Exceeding £2180 but not exceeding £2330 | 381 |
| Exceeding £2330 but not exceeding £2490 | 419 |
| Exceeding £2490 but not exceeding £2680 | 457 |
| Exceeding £2680 but not exceeding £2900 | 568 |
| Exceeding £2900 but not exceeding £3150 | 693 |
| Exceeding £3150 but not exceeding £3450 | 823 |
| Exceeding £3450 but not exceeding £3800 | 982 |
| Exceeding £3800 but not exceeding £4100 | 1140 |
| Exceeding £4100 | 1140 in respect of the first £4100 plus 50% of the remainder |

Annex C: Deductions based on daily earnings (Table C)

| (1) Net earnings | (2) Deduction (£) |
|---------------------------------------|---|
| Not exceeding £12 | Nil |
| Exceeding £12 but not exceeding £16 | 0.50 |
| Exceeding £16 but not exceeding £19 | 0.90 |
| Exceeding £19 but not exceeding £22 | 1.40 |
| Exceeding £22 but not exceeding £25 | 1.90 |
| Exceeding £25 but not exceeding £28 | 3.10 |
| Exceeding £28 but not exceeding £31 | 3.70 |
| Exceeding £31 but not exceeding £35 | 4.30 |
| Exceeding £35 but not exceeding £39 | 4.90 |
| Exceeding £39 but not exceeding £43 | 5.50 |
| Exceeding £43 but not exceeding £47 | 6.10 |
| Exceeding £47 but not exceeding £52 | 7.40 |
| Exceeding £52 but not exceeding £57 | 8.30 |
| Exceeding £57 but not exceeding £62 | 9.90 |
| Exceeding £62 but not exceeding £68 | 11.50 |
| Exceeding £68 but not exceeding £75 | 13.50 |
| Exceeding £75 but not exceeding £82 | 15.90 |
| Exceeding £82 but not exceeding £90 | 18.80 |
| Exceeding £90 but not exceeding £100 | 21.70 |
| Exceeding £100 but not exceeding £110 | 26.40 |
| Exceeding £110 but not exceeding £121 | 31.10 |
| Exceeding £121 but not exceeding £133 | 35.80 |
| Exceeding £133 | 35.80 in respect of the first £133 plus 50% of the remainder |

Annex D: Legislation

The relevant legislation is currently the Debtors (Scotland) Act 1987, amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Note: The Abolition of Domestic Rates etc. (Scotland) Act 1987 and the Local Government Finance Act 1992 enable Scottish authorities to enforce recovery of unpaid community charge and council tax arrears respectively under the provisions of the Debtors (Scotland) Act 1987.

The Diligence Against Earnings (Variation) (Scotland) Regulations 2006 amended the statutory tables of deductions, contained in schedule 2 to the 1987 Act.

4 Deduction from Earnings: Child Support (United Kingdom)

- 4.1 Deduction from Earnings Orders (DEOs)
- 4.2 Collecting Information
- 4.3 How to operate a DEO
- 4.4 Deductions can only be made from the following types of earnings
- 4.5 Your expenses
- 4.6 Informing your employee of deductions
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- 4.20 Voluntary Deduction from Earnings Arrangements
- 4.21 Legislation

4.1 Deduction from Earnings Orders

The Child Support Agency (CSA) is an Executive Agency of the Department for Work and Pensions (DWP). The Northern Ireland CSA is an Executive Agency of the Department for Social Development (DSD). It operates a non-court-based system for the collection of child maintenance in Great Britain and Northern Ireland. A Deduction from Earnings Order (DEO) is a method used to collect child maintenance direct from an employee's salary. The DEO that you receive may have been issued by the CSA or a debt collection agency acting for them on behalf of the Secretary of State.

4.2 Collecting Information

As an employer, you will sometimes be affected by the work of the CSA. In particular, the CSA may require you to provide information. In most cases, information and evidence is obtained from the parents themselves.

It is a criminal offence if a person fails to provide information when required to do so or knowingly provides false information.

It is an offence to make a false statement or representation or knowingly provide, or allow to be provided, information that is false¹. Also, it is also an offence to fail to provide information when required to do so². Furthermore, it is a criminal offence for any person to intentionally delay or obstruct any inspector exercising his powers, or without reasonable excuse, refuse or neglect to answer any questions or furnish any information or to produce any document when required to do so³.

If a person is found guilty of any of these offences they will be subject on conviction to a fine of up to £1000.

4.3 How to operate a DEO

A DEO tells you how often you should make a deduction (usually weekly or monthly) and consists of two parts.

- A normal deduction rate (NDR), which is the amount of child maintenance the CSA has calculated that your employee should pay plus any arrears. This amount should be taken from their earnings in each pay period; and

For cases pre-March 2003

- A protected earnings rate (PER). This allows your employee to keep a minimum level of their earnings after deductions.

For cases post-March 2003

- A protected earnings proportion (PEP). This is the minimum amount of take home pay your employee is left with after making the deduction. This is 60 per cent of their net earnings.

The CSA will work out both the NDR and the PER/PEP for you.

You should continue to make deductions until the CSA tells you to stop.

¹Under Section 14A of the Child Support Act 1991 and Article 16A(2) of the Child Support (NI) Order 1991

²Section 14A of the Child Support Act 1991 and Article 16A(3) of the Child Support (NI) Order 1991

³Under Section 15(9) of the Child Support Act 1991 and Article 17(9) of the Child Support (NI) Order 1991

4.4 Deductions can only be made from the following types of earnings:

- wages and salary, fees, bonus, commission, overtime pay or most payments on top of wages and salary under a contract of services
- private or occupational pensions and compensation payments for loss or reduction of earnings
- statutory sick pay
- contractual sick pay
- contractual maternity pay
- contractual paternity pay
- contractual adoption pay
- contractual redundancy pay.

On each pay day you should:

- calculate you employee's deductible earnings
- set aside your employee's protected earnings.

Note: If this does not leave enough for the normal deduction, you should carry forward the shortfall to the next pay-day. If the employee does not earn sufficient even to cover the protected earnings, you should carry forward both the shortfall in the protected earnings and the whole normal deduction.

For cases pre-March 2003 – any shortfall between what is earned in a pay period and the protected earnings rate is added to the PER for the next pay period. Any shortfall in the deduction rate is also carried forward.

For cases post-March 2003 – any shortfall in the PEP is not carried forward under the new scheme, however, any shortfall in the deduction rate is carried forward.

- deduct, if possible, the amount specified in the order and any arrears of deductions from previous pay periods;
- ensure that the deduction is sent to the CSA by the 19th day of the following month and
- pay the remainder to your employee.

The carry forward of protected earnings applies to old scheme cases only.

4.5 Your expenses

You may deduct up to an additional £1 from your employee's earnings, for each deduction, to help towards your administrative costs, even if this reduces the employee's income below the protected earnings rate/proportion.

This deduction, which is kept by you, is in addition to the DEOs. You cannot make this charge if you do not make a deduction.

4.6 Informing your employee of deductions

You must inform your employee in writing about each deduction (including the amount you deduct towards your expenses) when he is given his pay statement. If pay statements are not usually given, you should inform your employee in writing no later than the pay day after the one on which the deduction was made.

4.7 Making payments

How do I pay money to the CSA?

CSA's preferred method of payment is detailed automated credit transfer. This is also sometimes known as DACT, detailed ACT or individual Banks Automated Clearing System (BACS) payment.

If you would like information or help to set up a detailed automated credit transfer, you can ring 0191 225 3217 or e-mail CSA at csa-cfat-cust-svce-team@dwp.gsi.gov.uk.

The advantages of detailed automated credit transfer for employers include:

- you won't have to spend time preparing and sending CSA a payment schedule
- CSA are less likely to have to ring you to get more information about the payment or schedule, and
- it is a very secure, accurate and quick method of payment – there are no schedules or cheques to get lost in the post, and payments won't go missing.

It also helps CSA to offer a better service to parents, because payments are made automatically, on time and CSA can keep a full payment history.

However, if you can't pay by this method, you can use automated credit transfer (ACT). The difference is that if you use this way of paying you will also have to prepare and send CSA a payment schedule that matches the amount you pay. You can use the tear-off form at the back of this leaflet or you can download the form from CSA's website at www.csa.gov.uk/pdf/english/forms/screen/CSF802.pdf.

A third method of paying is by cheque. This is time consuming, and cheques can be delayed or go missing. They are less secure than other payment methods and can also be less accurate. If there any problems with a payment you send by cheque, CSA will have to contact you to sort out them out.

Setting up a detailed automated credit transfer

CSA will help you set up a detailed automated credit transfer and make sure money is transferred accurately and on time, both to CSA and, in turn, to the parent with care.

In the BACS field for each employee, you will need to include the information on the table below.

| Banks Automated Clearing System field number | Description of field | Content |
|--|-------------------------------------|------------------|
| 1 | Child Support Agency bank sort code | 40-34-18 |
| 2 | Child Support Agency account number | 41775448 |
| 3 | Account code | Code 0 |
| 4 | Transaction Code | 99 |
| 5 | Your company's bank sort code | |
| 6 | Your company's bank account number | |
| 7 | Free | |
| 8 | Amount of deduction | |
| 9 | Your company's name | |
| 10 | Employee's reference number | See opposite |
| 11 | Child Support Agency account name | CSA Client Funds |

What is the employee's reference number?

You must make sure that the reference number you quote in field 10 is exactly the same as shown on the latest letter from CSA about making deductions from earnings. **You can find the number in the top right-hand corner of our letter.** Valid reference numbers will be in one of four formats, as shown in the table below.

| Reference number | Description of field | Field | Field type | Example |
|------------------|--|-------|---------------------|--------------|
| NINO | Employee's National Insurance number | 9 | Letters and numbers | NA123456A |
| RFA | Employee's request for assessment number | 12 | Numbers only | 100123456701 |
| Blank | Only to be used when sending a single payment for more than one employee | 0 | None | None |
| PID | Employee's personal identifier | 12 | Numbers only | 001234567800 |

If any of this information is missing or if it is at all different from the number in the letter, for example if you put any spaces, commas, full stops, hyphens or anything else in the number, CSA's computer system will not be able to process the payment, and so it will not be able to pay the parent with care.

How do I pay by automated credit transfer?

If you use this process, you will make one payment through BACS to cover the total deductions from your employees, and you will send CSA an accompanying breakdown known as a payment schedule.

When you pay by automated credit transfer using BACS, field 10 is left blank. You can find more information about this in the section 'Sending a payment schedule'.

How do I pay by cheque?

As mentioned above, CSA prefer to receive payments by detailed automatic credit transfer rather than by cheque. However, if you need to make payments by cheque, cheques should be made payable to 'Child Support Agency'. If you are sending payments to more than one CSA office, contact one of the offices and arrange to send all of the payments to them with the payment schedule.

Sending a payment schedule

If you are paying by automated credit transfer or by cheque, you must also send CSA a payment schedule listing the deductions you have made from your employees' earnings. The payment can be a combination of deductions made under deduction from earnings orders and voluntary deduction from earnings arrangements.

The amount paid by automated credit transfer or cheque must match the total amount of deductions detailed on the payment schedule.

If it doesn't match, CSA will not be able to make payments to any of the parents with care included on the payment schedule until the problem is corrected. If this happens, CSA will contact you for an accurate schedule.

You must include the following details for each employee:

- their full name (forename and surname)
- their reference number, and
- the amount of the deduction taken (in pounds sterling).

If you are paying by automated credit transfer, you should fax or post the schedule to:

Client Funds Account Team
 Child Support Agency
 Room BP6102, Alnwick House
 Benton Park View
 Longbenton
 Newcastle Upon Tyne NE98 1YX
 Fax: 0191 225 9440
 0191 225 3178
 0191 225 5426
 0191 225 9008

Faxing the information will mean that child maintenance payments can get to the parent with care more quickly. If you send a fax to any of these numbers, it will come to the right team.

If you are paying by cheque, you should post the cheque (or cheques) and the payment schedules to the CSA office shown in the letter it sent you.

You can use the tear-off form at the back of this leaflet or download a blank deduction from earnings order payment schedule from CSA's website at www.csa.gov.uk/pdf/english/forms/screen/CSF802.pdf.

Remember, if you use the detailed automated credit transfer payment method, you do not need to send CSA a payment schedule.

What happens if I pay the wrong amount?

If you find a mistake in the amount you have paid CSA, contact the Client Fund Accounts Team as soon as possible. They will help you work out the best way to make up any overpayment or underpayment.

Don't use the deduction from earnings payment schedule to recover or take previous overpayments or underpayments.

If you do, CSA may not be able to pay the parent with care. If you have made a mistake, you should send a fax with the details to the Client Fund Accounts Team for advice. You can find their fax numbers above.

If the payment we receive is not the same as the total shown on the payment schedule, the Client Fund Accounts Team will contact you to arrange the correct payment or to correct the schedule.

4.8 What you do if you receive more than one DEO or another type of order for the same employee

You will find help in section 10 on what to do if you receive more than one order for the same employee.

4.9 Review of an order

The CSA will review a DEO if there is a change in the amount of maintenance payable or if any arrears and any other amount due are paid.

4.10 Variation of an order

The CSA may change a DEO in order to increase or decrease the amount to be deducted, or to redirect it to another employer. If the DEO is varied, the CSA will notify you and your employee. You must comply with the varied DEO within seven days of receiving it.

4.11 Cancellation of an order

If a DEO is cancelled, the CSA will write to you and your employee.

4.12 When your employee leaves your employment

If you stop employing the liable person, the DEO will lapse from the pay-day coinciding with or following termination of employment.

4.13 You and the CSA

You must inform the CSA within ten days in writing (a telephone call is not sufficient), if:

- a DEO is sent to you but you do not employ the liable person
- the liable person leaves your employment.

You must also write to the CSA within seven days of the date you became aware that a DEO is in force for one of your employees.

Failure to comply with a Deduction from Earnings Order is an offence.

If you fail to comply with the DEO the CSA may prosecute you.

Key legislation is sections 14A and 15(9) of the *Child Support Act 1991* and *Child Support (NI) Order 1991*.

4.14 Your employee and the CSA

Within seven days of being asked to do so, your employee must write to the CSA giving:

- the name and address of his employer
- the amount of his earnings and anticipated earnings and
- his place of employment, the nature of his work, and any pay reference/works number.

Your employee must also inform the CSA in writing within seven days of leaving your employment, or becoming unemployed or re-deployed.

4.15 Your employee's objections

If your employee is unhappy with the amount you are deducting in compliance with the DEO, he should contact the CSA.

Your employee may appeal to a magistrates' court (England and Wales, Northern Ireland), or to a sheriff's court (Scotland), on the grounds that:

- the DEO is defective
- deductions are being made from payments which are not earnings.

The appeal must be made within 28 days from the date the order was made (or, if the employee is living or working abroad, 56 days).

In the meantime you must continue to operate the DEO as supplied to you by the CSA.

4.16 Further help and advice

You can visit CSA's website at www.csa.gov.uk for more information on its services and how it works out child maintenance.

The website contains a section for employers and the most up-to-date information about how CSA are improving, how it delivers its services and what is happening to the child maintenance system.

It also contains:

- copies of leaflets that you can download
- information on deduction from earnings orders, and
- frequently asked questions

There are also links to other useful web-sites. The number you ring for extra help or information depends on which of CSA's offices is dealing with your employee's case. You will find the right number in the letter CSA have sent you.

For old scheme cases there is also a national helpline on 08457 133 133 or textphone 08457 138 924. You can call this number if you:

- have any questions about how CSA work out child maintenance
- want help or more information after you have read this leaflet, or
- want CSA to send you other leaflets.

Lines are open from 8am to 8pm Monday to Friday and from 9am to 5pm on Saturdays. Calls are charged at local rate.

The person taking your call will not have access to information about your employee, but they can help you with general questions about child maintenance. If you need to discuss the circumstances of an employee's case, please use the phone number at the top right-hand corner of the letter CSA will have sent you.

If you want to speak in Welsh, you can ring CSA's Welsh language helpline on 08457 138 091. The line is open 9am to 5pm Monday to Friday.

CSA may record phone calls to check our service and to train its employees.

You can also e-mail CSA through its website or e-mail its Employer Relations Team at Client-Relations@dwp.gsi.gov.uk.

If you would like more copies of this leaflet, you can e-mail communications.CSA@dwp.gsi.gov.uk or fax 0191 225 9917.

This leaflet is also available in other languages, in large print, in Braille and on audio cassette. You can get these formats by ringing CSA on 08457 133 133.

Further information can also be found in the CSA's leaflet CSL313 *What is my role in helping my employees pay child maintenance?* which can be obtained via the CSA website or the CSA National Helpline (telephone: 08457 133 133)

4.17 Calculating deductions: Child Support Deductions from Earnings Orders

4.17.1 Introduction

This section explains how to calculate deductions for DEOs made by the CSA to collect maintenance.

DEOs can only be applied to certain categories of earnings referred to as 'attachable' or 'deductible' earnings. In this section 'attachable' will be used instead of 'deductible'. You will need to calculate your employee's attachable earnings before you can make the deduction specified in the order.

Most DEOs will show two amounts: the NDR and the PER for cases pre-March 2003 or the PEP for cases post-March 2003. You should apply these to your employee's attachable earnings in order to calculate how much to pay your employee and how much to send to the CSA.

4.17.2 Attachable earnings

Attachable earnings are defined by the legislation relevant to the particular order (see Figure 2 for a quick glance and Appendix A for fuller details (employers in Northern Ireland should see Appendix B)).

Note: If you lend money to your employee (for example, for a train season ticket), you should not make a deduction under a DEO from the total loan. But if you then recover the loan through your employee's earnings, you must make the DEO deduction before you take any repayment towards the loan.

4.17.3 Normal deduction rate

The NDR is the amount to be deducted from attachable earnings in each pay period. The NDR can include not only current maintenance liability, but also an amount for any arrears. The NDR is usually expressed in an order as a weekly or monthly rate. You should adjust the amount proportionally if earnings are paid at unusual intervals.

4.17.4 Protected earnings

The PER/PEP is the amount that the CSA calculates is necessary for your employee for food, rent or mortgage, water, gas or electricity and other basic family and household bills. You should set aside the protected earnings before making a deduction.

Protected earnings are usually expressed in an order as a weekly or monthly rate. You should adjust the amount proportionally if earnings are paid at other intervals.

For cases pre-March 2003 – any shortfall between what is earned in a pay period and the protected earnings rate is added to the PER for the next pay period. Any shortfall in the deduction rate is also carried forward.

For cases post-March 2003 – any shortfall in the PEP is not carried forward under the new scheme, however, any shortfall in the deduction rate is carried forward.

4.17.5 Priority of orders

A DEO takes priority over an AEO for a judgment or administration debt (non-priority debts), and any arrestment of earnings under Scottish law. In England and Wales, when a DEO is served on an employee who is already subject to an attachment of earnings order for a priority debt (for example, Council Tax or fine), the earliest has priority. Any deductions under a lower priority order are taken from the net earnings left after deductions under the first have been made.

4.17.6 How a deduction from Earnings Order works

DEOs have two main parts:

Old Scheme (pre-March 2003)

- a NDR, which is the amount to be taken from your employee's net earnings in each pay period. The NDR is the amount of child maintenance plus any arrears, and

- a PER which allows your employee to keep a minimum level of net earnings after deductions have been made. This is the exempt income is equivalent to the current maintenance assessment.

New Scheme (post-March 2003)

- a NDR (same as old scheme), and
- a PEP which gives the minimum amount of take home pay your employee is left with after making the deduction. This is 60 per cent of your employee's net income.

The CSA will work out the NDR and the PER/PEP

In any period where there are not enough net earnings for the full deduction rate to be taken, the shortfall in the NDR is carried forward. It should be added to the deduction to be taken in the next pay period. This allows for the shortfall to be made up if or when earnings increase.

If the date the CSA asked you to take the deduction is not your employee's pay date, you should take the amount on the next pay date to this.

For cases pre-March 2003 – any shortfall between what is earned in a pay period and the protected earnings rate is added to the PER for the next pay period. Any shortfall in the deduction rate is also carried forward.

For cases post-March 2003 – any shortfall in the PEP is not carried forward under the new scheme, however, any shortfall in the deduction rate is carried forward.

4.18 Examples of calculations for Child Support Deductions from Earnings Orders under the Old Scheme (pre-March 2003)

Old Scheme – a ten digit reference number used as reference number

If the:

- employee's net earnings are £160 per week
- the NDR is £30 per week
- this leaves £130 per week
- and the protected earnings rate is £100 per week.

The full deduction of £30 can be made and sent to the CSA. You can deduct up to £1 for administration costs and your employee keeps the rest. The actual amounts depend on the person's individual circumstances.

The next example illustrates what happens when there are not enough net earnings to pay the full amount of child maintenance owed – again the amounts involved will depend on individual circumstances.

First week

If the:

- employee's net earnings are £120 per week
- the PER is £100 per week
- you would only be able to take £20 as you cannot go under the PER of £100

- you would carry forward the £10 owed to the next pay period.

It is your responsibility to carry forward any shortfall to the employee's next payment.

Second week

If the:

- employee's net earnings are £130 per week
- the NDR is £30 + £10 from the previous week = £40
- this leaves £90
- the PER is £100.

You cannot go below the protected earnings rate so you would deduct £30 and send it to the CSA and carry forward the £10 owed to the next pay period.

There may be several weeks where arrears are carried forward before being paid off.

If your employee's net earnings are less than their PER, the difference between them should be added to the PER for the next pay period. This will ensure that over time the employee receives average earnings of at least their PER.

You will not be able to deduct anything from their earnings and you should not deduct £1 for administration costs. This is how it would work:

Example 1

First Week

If the:

- employee's net earnings are £90 per week
- the NDR is £30 per week
- this would leave £60 per week
- the PER is £100 per week

You would not make any deduction and the £30 owed is carried forward to the next pay period.

Because their net earnings are £10 below their PER of £100, the £10 is carried forward and added to the employee's PER for the next pay period.

Second Week

If the:

- employee's net earnings are £180 per week
- the NDR is £30 + £30 carried forward from the first week = £60
- this would leave £120
- the PER is £100 + £10 carried forward from the first week = £110

You can deduct the full £60 as the employee would be left with £120 which is more than the increased PER of £110.

You may deduct up to £1 for administrative costs. This amount is in addition to the deduction from earnings order.

Example 2

First Week

If the:

- employee's net earnings are £120 per week
- the NDR is £30 per week
- this would leave £90 per week
- the PER is £100 per week.

You would only deduct £20 and carry forward the £10 owed to the next pay period.

Second Week

If the:

- employee's net earnings are £80 per week
- the normal deduction is £30 + £10 from the first week = £40
- this would leave £40
- the PER is £100 per week.

You would not make any deduction as the amount left is below their PER. You would carry forward the £40 owed to the next week. Because your employee's net earnings this week were £20 below their PER, you would add this £20 to their PER to the next week.

Third Week

If the:

- employee's net earnings are £130
- the normal deduction is £30 per week + £40 carried over from the second week = £70
- this would leave £60
- the PER is £100 + £20 carried over from the second week = £120.

You would only be able to deduct £10 from your employee due to the higher PER. This should be sent to the CSA and the £60 owed carried forward to the next week.

Fourth Week

If the:

- employee's net earnings are £150 per week
- the NDR is £30 per week + £60 carried over from the third week = £90
- this would leave £60
- the PER is £100.

You would be able to deduct £50 and carry forward £40 owed to the next pay period. As their net earnings are above the PER there are no arrears of protected earnings to carry forward.

You may deduct up to £1 for administrative costs. This amount is in addition to the deduction from earnings order.

The examples show that the amount of child maintenance owed by the employee and the level of their protected earnings can be adjusted if their earnings fluctuate.

If your employee's net earnings regularly go below their PER their child maintenance assessment may need to be changed. They should contact the CSA to tell them about this change in their circumstances.

- If you are operating a DEO which gives a PER and your employee earns less than usual, you must set aside the protected earnings, even if this does not leave enough for the normal deduction. You will have to make up the full deduction as soon as possible.
- If your employee does not earn enough to cover his protected earnings in any wage period, you will have to carry over to the next pay day both the shortfall in his protected earnings and the whole normal deduction.

4.19 Examples of calculations for Child Support Deductions from Earnings Orders under the New Scheme (post-March 2003)

New Scheme – National Insurance number used as reference

Example 3: full deduction can be taken.

Your employee's net earnings are £160 per week. The deduction rate is £32 per week and the PEP is £96 (60 per cent of net earnings)

- Net earnings are £160
- less the PEP of £96
- leaves £64
- you would send the CSA £32.

You may deduct up to £1 for administrative costs. This amount is in addition to the deduction from earnings order.

The PEP of their earnings is 60 per cent. This amount is based on information about your employee's earnings which is used to calculate how much child maintenance they owe. Note that the CSA provides the PEP.

Example 4: full deduction cannot be taken in pay period.

First Week

Your employee's net earnings are temporarily reduced to £120 per week. The deduction rate is £32 per week and the PEP is £96.

- Net earnings are £120
- less the PEP of £96
- leaves £24
- you would send the CSA £24.

You may deduct up to £1 for administrative costs. This amount is in addition to the DEO even though it reduces the liable person's income below the PEP. The shortfall of £8 (= £32 normal - £24 actual) is carried forward to the next pay period.

In any period when there are not enough net earnings for the full deduction to be taken, you should carry forward the shortfall. You should add it to the deduction to be taken for the next pay period. However, there may be cases where the shortfall is carried forward for several weeks before being repaid. You will need to keep a record of any ongoing shortfall.

Second Week

Your employee's net earnings are £160 this week. The PEP is £96 and the normal deduction is £32

- Net earnings are £160,
- less the PEP of £96
- leaves £64
- you would send the CSA £40 (£32 + £8 shortfall).

You may deduct up to £1 for administrative costs. This amount is in addition to the DEO.

Example 5: no deduction can be taken

First Week

The employee's net earnings are temporarily reduced to £90 per week. The deduction rate is £32 per week and the protected earnings proportion is £96

- Net earnings are £90
- less the PEP of £96
- leaves £0
- in this case, you would not send any money to the CSA.

You should not take anything towards administrative costs because you cannot make a deduction. The shortfall of £32 is carried forward to the next pay period.

Second Week

- Net earnings are £170
- less the PEP of £96
- leaves £74
- you would send the CSA £64 (£32 + £32 shortfall).

You may deduct up to £1 for administrative costs. This amount is in addition to the DEO.

As examples show, different amounts can be taken where earnings fluctuate. If your employee's earnings fall below their protected earnings proportion, they should contact the CSA, as its child maintenance calculation may need to be changed.

Example 6: full deduction can be taken and earnings include two weeks holiday pay paid in advance

Your employee has net earnings of £160 per week. The NDR is £32 per week and the PEP is £96. Net earnings are $£160 \times 3 = £480$ (1 week's pay + 2 weeks holiday pay)

- less the PEP of $£96 \times 3 = £288$
- leaves £192
- you would send the CSA £96 ($£32 \times 3$).

You may deduct up to £1 for administration costs.

Summary of procedures

- calculate your employee's attachable earnings
- set aside his PEP
- take off the NDR
- send the NDR to the CSA
- deduct, if you wish, up to £1 from the remainder towards administrative costs (even if this reduces your employee's income below the protected earnings rate)
- pay your employee any remaining sum.

You may deduct up to £1 for administrative costs. This amount is in addition to the deduction from earnings order.

Note: if you are operating a DEO which gives a PEP (post 2003 cases) and your employee earns less than usual, you must set aside the protected earnings, even if this does not leave enough for the normal deduction. You will have to make up the full deduction as soon as possible.

if your employee does not earn enough to cover even his protected earnings in one wage period, you should carry over to the next pay-day only the whole normal deduction. Do not carry forward the shortfall in his protected earnings.

4.20 Voluntary Deduction from Earnings Arrangements

Most non-resident parents pay their child maintenance without needing a DEO. Some of these parents may prefer to have the money they owe taken directly from their earnings. This is called a voluntary deduction from earnings arrangement.

As an employer, you don't have to set up a voluntary deduction from earnings arrangement when the CSA asks you to. However, there are several reasons why you might agree to it.

- They are a quick and efficient way to get money to children who need it
- They help non-resident parents to organise their personal finances better
- Agreeing to this kind of request helps your employee to pay in the way they want and so can help you maintain a good relationship with them
- The CSA may need to use a DEO if the non-resident parents can't pay in the way they want to

How do voluntary deduction from earnings work?

Voluntary deduction from earnings arrangements work in the same way as other voluntary deductions that you make from your employee's earnings, such as union fees or loan repayments.

Your employee will have asked for this method of payment and will know how much it is for.

There are a number of important differences between a voluntary deduction from earnings arrangement and a deduction from earnings order.

- A voluntary deduction from earnings arrangement is not a priority deduction and there are no rules about which voluntary deduction you should take first
- The protected earnings rate or proportion does not apply to a voluntary deduction from earnings arrangement
- You don't carry forward any shortfall between the amount of the voluntary deduction from earnings arrangement and the amount you should take. You don't have to tell the CSA if there is a shortfall.
- You can choose to take an amount towards your administrative costs, but you must first agree this with your employee.

How do I work out how much money I should take?

First, take the payments for any priority orders that you take from your employee. Then make any deductions due from non-priority attachment of earnings orders.

After you have made these deductions, you can take money for the voluntary deduction from earnings arrangement. The CSA will write to you and your employee to tell you the amount you should take.

If there is not enough money left to take the full amount, you must take what is available. It is possible that you will leave the employee with little or no take-home pay, but the employee will have agreed to the amount of the voluntary deduction from earnings and asked for this particular method of payment.

Do not carry forward any shortfall to the next pay period.

How do I set up deduction from earnings?

To set up a deduction from earnings order or voluntary deduction from earnings arrangement the CSA will ask you for:

- Your business's name and address
- The amount of the non-resident parent's current earnings
- Details of the non-resident parent's place of work and the type of work they do, and
- The non-resident parent's payroll number

Once the CSA has all the information it needs, it will send you a letter that tells you whether it is asking you to set up a deduction from earnings order or a voluntary deduction from earnings arrangement (including the deduction from earnings order if appropriate). It will tell you the normal deduction rate. For deduction from earnings orders, it will also tell you the protected earnings rate or proportion.

It's then up to you to make sure you take the right amount from your employee's earnings each week or each month (in line with the payment schedule the CSA agreed with you) and pay it to the CSA.

Can I take any money for my administrative costs?

If there is to be a change, this must be discussed with the employee. This amount is on top of the amount for the deduction from earnings order.

If you choose to charge a fee for running a voluntary deduction from earnings arrangement, you must agree with your employee the amount you will take.

For either type of deduction, you must tell your employee the amount you have taken from their earnings, including any amount for administrative costs. You must then record this agreement in writing. You must do this no later than the pay day after the one on which you made the deduction.

For further information, please consult the CSA leaflet CSL313 *What is my role in helping my employees pay child maintenance?* Available on www.csa.gov.uk

4.21 Legislation

The relevant legislation covering Child Support Deductions from Earnings is:

- the *Child Support Act 1991*;
- the *Child Support (Northern Ireland) Order 1991*;
- the *Child Support (Collection and Enforcement) Regulations 1992*, SI No. 1992/1989;
- the *Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992* SI No. 1992/465;
- the *Child Support (Miscellaneous Amendment and Transitional Provisions) Regulations 1994*, SI No. 1994/227.

5 HMRC Student Loans

Student Loan Deductions and Court Orders

HMRC is responsible for the collection of student loans. There may be a small number of cases where, in addition to considering an Attachment of Earnings Order (AEO) or Deduction from Earnings Order (DEO), you will also be obliged to make Student Loan deductions.

The order and amount of Student Loan deductions varies depending on whether

- The AEO/DEO is a priority or non-priority order
- The AEO/DEO is based on specific or percentage amounts
- The total deductions, including Student Loan deductions, breach the protected earnings stipulated in the court order.

You will find more information in the Collection of Student Loans Helpbook E17 which is available on the Employer CD-ROM, or from the Employer Orderline (0845 7 646 646). The Helpbook also contains a working sheet that will help you calculate the correct Student Loan deduction when there is a Priority Order based on specified amounts.

Here is an example of how to calculate the Student Loan deduction when there are protected earnings of £850 and a priority order of £563. The monthly salary is £2000

| Step | | Box | |
|------|--|-----|--------------------------|
| 1. | Earnings for Student Loan purposes | 1 | £2000 |
| 2. | Normal Student Loan deductions | 2 | £67 |
| 3. | Attachable Earnings for AEO/DEO | 3 | £1466 (after tax etc) |
| 4. | Amount of priority AEO/DEO to be deducted | 4 | £563 |
| 5. | Net Attachable Earnings after AEO/DEO (Box 3 - Box 4) | 5 | £903 |
| 6. | Level of protected earnings (from most recent AEO/DEO) | 6 | £850 |
| 7. | Net attachable earnings minus level of protected earnings (Box 5 minus Box 6) rounded down to nearest pound. Maximum amount available for Student Loan Deductions | 7 | £53 |
| 8. | Amount of Student Loan deductions to be made This is the lower of Box 2 ('Normal' Student Loan deductions) or box 7 ('maximum' Student Loan deductions) | 8 | £53 |

6 Miscellaneous

- 6.1 Income Payment Orders
- 6.2 Income Support Deduction Notices
- 6.3 Salary Sacrifice

6 Miscellaneous

As an employer, you may occasionally come across Income Payment Orders (IPO), Income Support Deduction Notices (ISDN) and Salary Sacrifice. These are complex issues and it is beyond the remit of this handbook to provide advice. This chapter outlines in only very general terms the details of these schemes for your information. You are always advised to seek independent legal advice.

6.1 Income Payment Orders

One of the aims of bankruptcy law is that the creditors should receive part or full payment of what they are owed. Creditors often feel aggrieved when they believe that the bankrupt appears to enjoy a good lifestyle whilst the debts remain unpaid. To address this point, section 310 of the Insolvency Act 1986 provides that the trustee can apply to the court for an order that the bankrupt (or his/her employer) make regular payments from his income into the estate from 'surplus' income. Such an order is known as an IPO.

The Enterprise Act 2002 extends this idea by introducing the Income Payments Agreement (IPA) to run alongside IPOs. IPAs are entered into voluntarily; however, there is a formal binding agreement between the official receiver or the trustee and the bankrupt that the contributions will be made. In effect, the IPA works in the same way as an IPO but removes the need for the official receiver or trustee to make an application to court.

Where the bankrupt has income in excess of expenditure, an IPA should be obtained in preference to an IPO, which should only be sought in those cases where the bankrupt does not consent to the proposed IPA.

For further information, you should consult the Insolvency Service and seek independent legal advice.

Application in Scotland

The Bankruptcy (Scotland) Act 1985, as with the Insolvency Act for England and Wales, provides that a trustee in sequestration can apply to the court for an IPO. The provisions in the 1985 Act are largely the same as those in the Insolvency Act, with the addition that if the debtor fails to comply with an IPO, then he will be guilty of an offence and liable to a fine or imprisonment.

From 1st April 2008, IPAs were introduced into the 1985 Act. IPAs in Scotland, although voluntary, also in effect operate in a similar way to IPOs but without the need for the trustee to make an application to court. If the debtor fails to comply with an IPA, the trustee may apply to the sheriff to have the IPA converted into an IPO with the same terms.

For further information, you should consult the Accountant in Bankruptcy and seek independent legal advice.

6.2 Income Support Deduction Notices

6.2.1 Introduction

Employees involved in a trade dispute and their families cannot claim Income Support (IS) for the first seven days of the industrial action. Following this period, a claim may be made on behalf of a dependent partner to avoid hardship providing they are not involved in the dispute.

Employees returning to work after a trade dispute may be able to get IS for the first 15 days. This payment will be deducted from their earnings over the next 6 months by the employer by means of an ISDN. If the employee returns to work for a different employer without going back to the job where they were in dispute, they will not have to pay back their IS payment.

6.2.2 ISDNs and Employers

ISDNs are issued to employers by the Department of Work and Pensions. They require employers to make deductions from pay to recover the amounts of IS paid to the employee in the period immediately following their return to work. The notices set a protected level of earnings and specify the total amount to be deducted. Employers continue to make deductions each pay day until the total has been recovered or a period of 26 weeks beginning with the date of the notice has elapsed.

6.2.3 Available Earnings

Legislation defines available earnings as *'the earnings, including any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness, which remain payable to a claimant on any pay-day after deduction by his employer of all amounts lawfully deductible by the employer otherwise than by virtue of a deduction notice'*.

6.2.4 Calculating Income Support Deduction Notices

If the employee is not paid at weekly intervals then multiply the weekly-protected earnings by 5 for monthly paid or divide by 5 if daily paid. If the employee's available earnings do not exceed the protected earnings by £1 - adjusted accordingly, e.g. £5 for monthly paid and 20p for daily paid - then no deduction can be made.

The amount to be deducted will be the lesser of the outstanding recoverable amount and half of that portion of the employee's earnings that exceeds the protected earnings. Fractions of 1p are ignored.

If an employee receives a payment on a day other than his regular pay-day, then, for the purposes of calculating his available earnings, the payment will be treated as being included in the employee's next regular pay-day.

6.2.5 ISDNs and Student Loan Deductions

Employers are required not to make student loan deductions from an employee's pay in any pay period in which they must make deductions from that employee under an ISDN. They must start (or restart) deducting student loan repayments when the ISDN has been paid off. The effect of ISDNs on student loan deductions will therefore be the same as the effect of Council Tax and Community Charge Attachment of Earnings Orders, and Scottish court orders.

In this situation, you are advised to seek professional legal advice.

6.2.6 Legislation

Statutory Instrument 1988 No. 664 The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 PART VIII.

Statutory Instrument 2002 No. 2859 The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2002.

6.3 Salary Sacrifice

Salary sacrifice has become increasingly popular in recent years. It is about varying the employee's terms and conditions as it relates to remuneration. It is, therefore, a matter for agreement between the employer and employee. They are not a Court Order; however, you should be aware of the rules if you have a salary sacrifice agreement with your employee and he is served with an attachment of earnings order. Note that an employee's salary cannot fall below the national minimum wage.

Where an employee is participating in a Salary Sacrifice Scheme, the effect is that attachable earnings will be lower than they would otherwise be. The value of any benefits provided under the Salary Sacrifice Scheme are ignored for the administration of AEO's, DEO's etc. If an employer wishes to confirm that a salary sacrifice scheme that is already in operation is tax effective, the employer only has to ask the HMRC to assess the scheme. If the scheme is tax effective, there is no issue for the administration of Court Orders.

It is beyond the remit of this handbook to provide detailed guidance. For further information, please refer to HM Revenue and Custom's 'Employment Income Manual' at www.hmrc.gov.uk/manuals/eimanual/EIM42772.htm

7 Priority of Orders

- 7.1 What do you do if you receive more than one order for the same employee?
- 7.2 How do you know which order takes priority?
- 7.3 Operating more than one order of different types

Employers in England and Wales

- 7.4 What type of order might you receive?
- 7.5 Which orders take priority
Priority check guide for employers in England and Wales

Employers in Northern Ireland

- 7.6 What type of order might you receive?
Priority check guide for employers in Northern Ireland

Employers in Scotland

- 7.7 What type of arrestment or order might you receive
Priority check guide for employers in Scotland
- 7.8 Calculating deductions for two or more orders against the earnings of the same employee

7.1 What do you do if you receive more than one order for the same employee?

You may be sent more than one order for the same employee. Whether you should apply more than one order against the earnings of your employee is determined by the type of order. Which order you apply first is determined by the priority status of the order.

7.2 How do you know which order takes priority?

In England, Wales and Northern Ireland priority depends on the type of order and the date it was made. In Scotland priority depends on the type of order and the date you received the order.

The orders, which you should apply first, to your employee's attachable earnings are explained in:

- Paragraphs 7.4 to 7.5 for employers in England and Wales
- Paragraph 7.6 for employers in Northern Ireland
- Paragraph 7.7 for employers in Scotland.

7.3 Operating more than one order of different types

When you apply orders of different types to your employee's earnings, you will need to take care that you apply the correct type of attachable earnings (the elements may vary depending on the type of order (see Figure 2)). You must not include in the available attachable earnings a deduction made under a prior order, but you should include any money set aside as 'protected earnings' under a prior order.

Employers in England and Wales

7.4 What type of order might you receive?

You could receive any of the following types of order:

- an Attachment of Earnings Order (AEO)
- a Child Support Deduction from Earnings Order (DEO)
- a Council Tax Attachment of Earnings Order (CTAEO).

Note: Orders made under the Attachment of Earnings Act 1971 fall into two categories:

- Orders for maintenance or a fine (commonly known as priority AEOs) and
- Orders for civil debts (commonly known as non-priority AEOs).

The copy of the order sent to you by the court should identify which type of AEO you are being asked to operate, except for CAPS Orders which don't specify (with the exception of maintenance orders).

7.5 Which orders take priority?

- Attachment of Earnings Orders for civil debts take precedence over each other by date of issue.

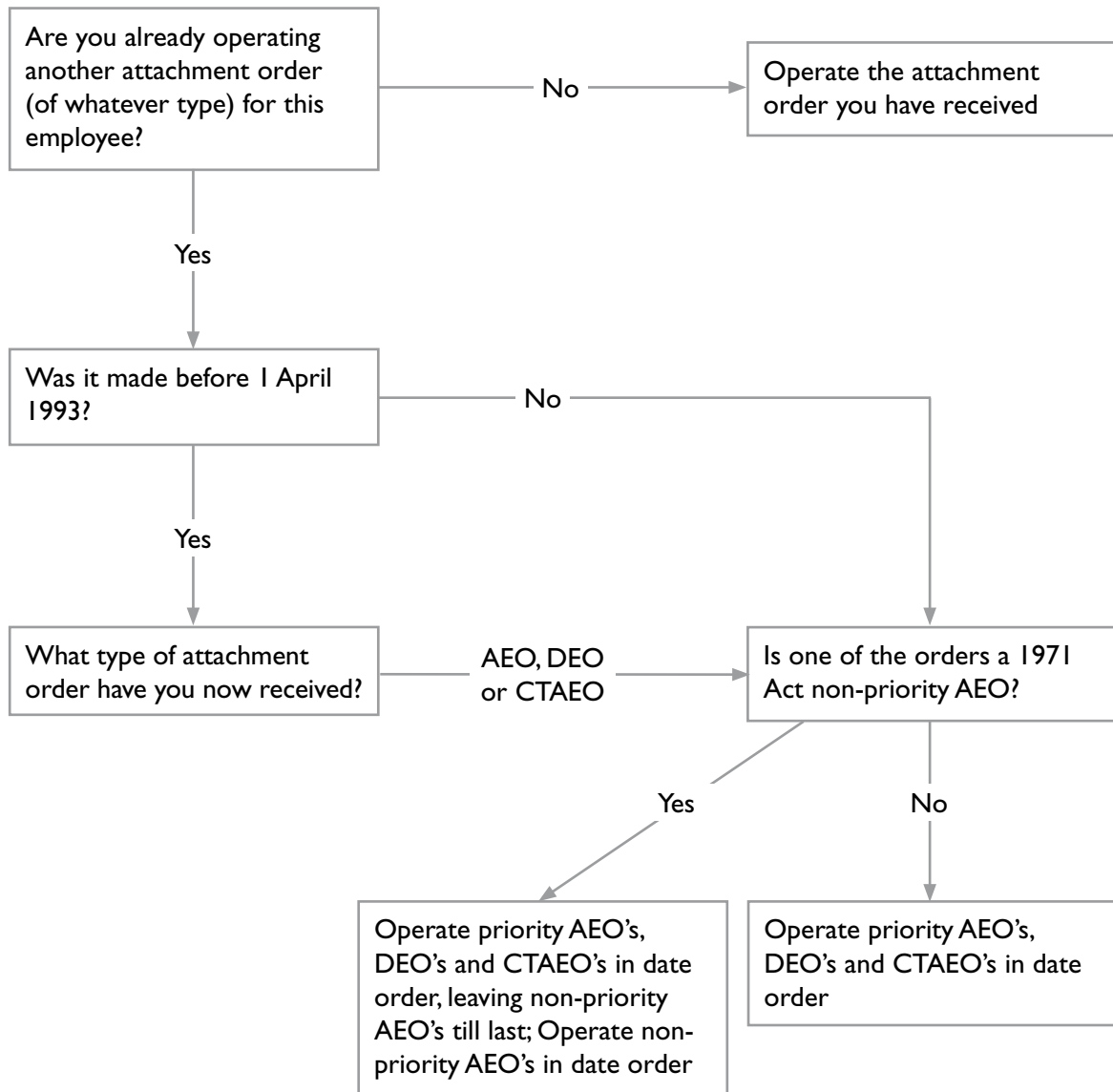
Note: If you receive more than one AEO for civil debt, you may wish to apply to the court to have the AEOs consolidated (see paragraph 2.8).

- An AEO for civil debt, student loan or a Scottish Current Maintenance Arrestment always gives way to an AEO for maintenance or a fine, a DEO or a CTAEO
- Earnings Arrestments should be treated as priority orders and taken in date sequence
- AEOs for maintenance or fines, DEOs and CTAEOs take precedence over each other by date of issue. You should apply the later order(s) to any remaining attachable earnings after you have made the deduction under the first order
- Only two CTAEOs for the same billing authority may be in operation against the earnings of an employee at any given time. Where you are already operating two CTAEOs against the earnings of an employee and you are sent a third CTAEO, you cannot apply it and you should return it to the authority, which sent it to you.

Note: If you receive two or more orders made on the same date, you should prioritise them by date of receipt. If they have all been made by the same court, Agency or local authority, you should refer them back to the court, Agency, or local authority for clarification as to which order you should operate first.

- Magistrates can withdraw old type fines orders and consolidate them with new type (fixed table deductions) orders. In these circumstances the two orders are consolidated under one new order and deducted together as one deduction. For the purposes of priority among orders of a similar type, the date of the old order will be taken as the date of the order.

Priority check guide for employers in England and Wales



Employers in Northern Ireland

7.6 What type of order might you receive?

You could receive either of the following types of order:

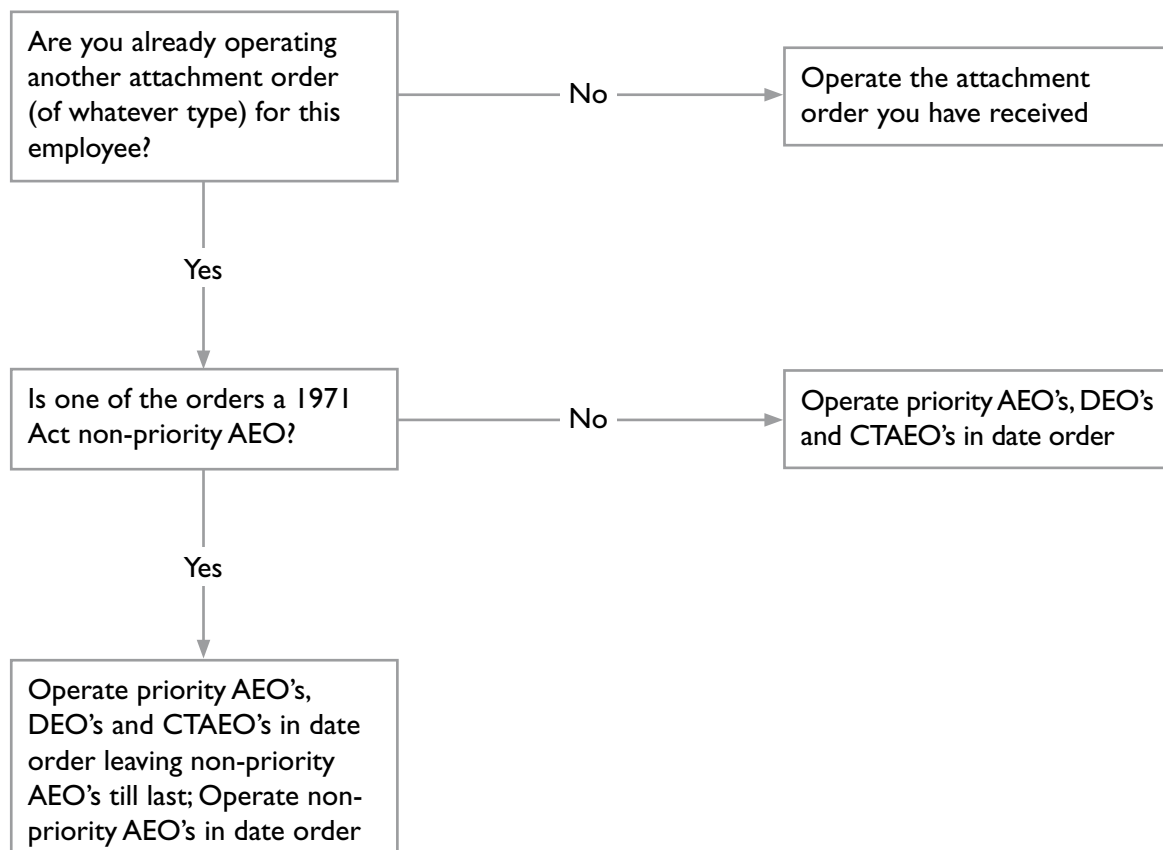
Attachment of Earnings Order or a Child Support Deduction from Earnings Order

Attachment of Earnings Orders for maintenance and Deduction from Earnings Orders take priority over each other by the date they were made.

Attachment of Earnings Orders for maintenance and Deduction from Earnings Orders always take precedence over an Attachment of Earnings Order for civil debt.

Only one Attachment of Earnings Order for civil debt can be in force at any one time against an employee's earnings. You will not be sent more than one AEO for civil debt for the same employee.

Priority check guide for employers in Northern Ireland



Employers in Scotland

7.7 What types of arrestment or order might you receive?

You could receive any of the following types of arrestment or order:

- an Earnings Arrestment (EA)
- a Current Maintenance Arrestment (CMA)
- a Conjoined Arrestment Order (CAO)
- a Child Support Deduction from Earnings Order (DEO).

A Deduction from Earnings (DEO) always takes priority over any form of arrestment order. This means that:

- if you are operating an EA and/or CMA or CAO, and you subsequently receive a DEO, you must apply the DEO first to your employee's earnings, and only then apply the arrestment order
- if you are operating a DEO, and you receive an EA, CMA or CAO, you should continue to apply the DEO first, and only then apply the arrestment order.

An EA and a CMA will rank equally. This means that:

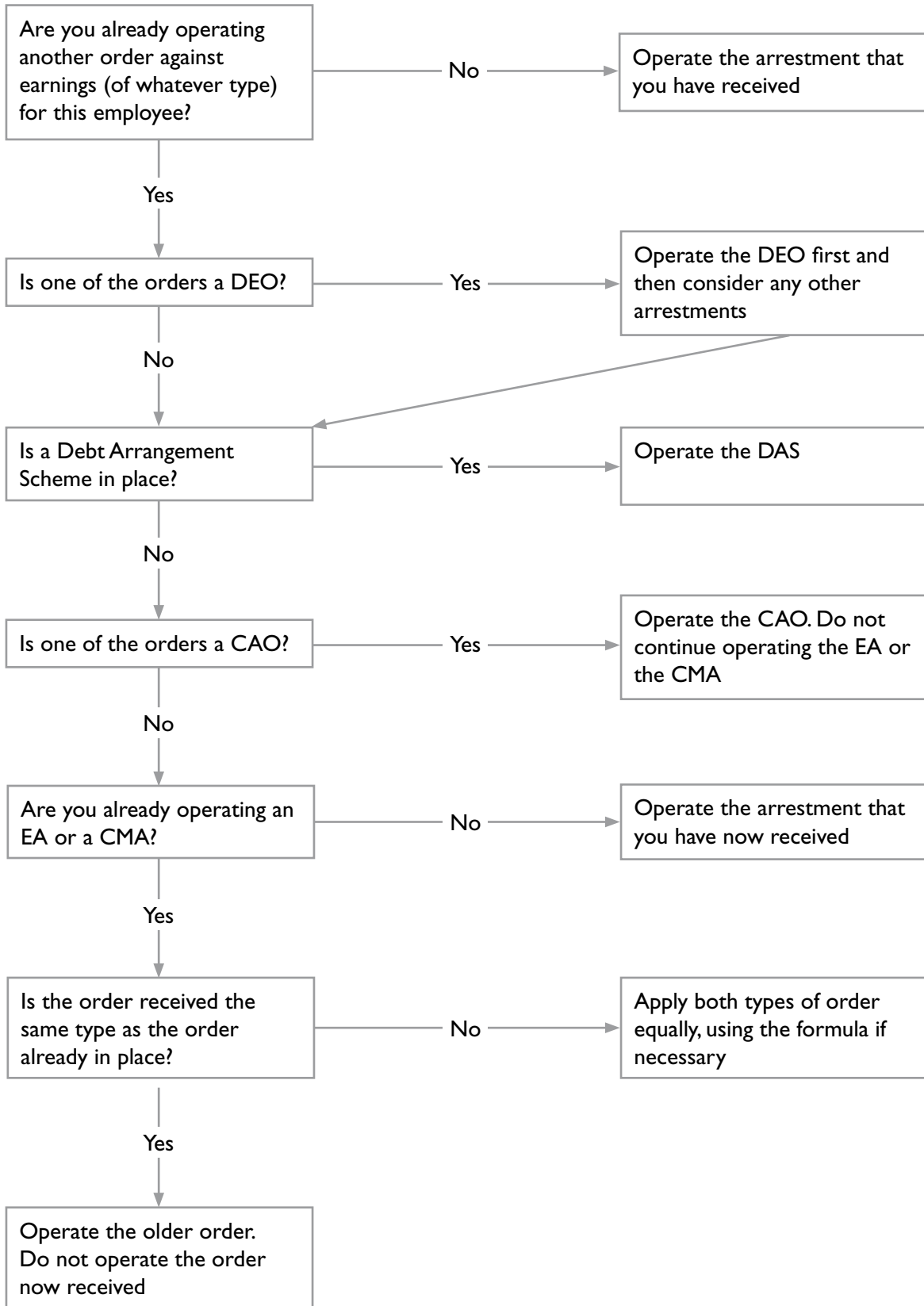
- if you are operating an EA and you receive a CMA, you should re-assess the application of the EA in light of the CMA which could lead to an adjustment of deductions. This is equally applicable if you are operating a CMA, and you receive an EA.

You cannot operate more than one Earnings Arrestment or more than one Current Maintenance Arrestment at any one time. This means that:

- if you are operating an EA, and you subsequently receive a second EA, you should notify the unsuccessful creditor that a previous arrestment is already in operation; you should also return the new arrestment to the creditor, together with details of the name and address of the first creditor, the date and place of execution, and the amount of the debt specified in the earnings arrestment schedule
- if you are operating a CMA, and you subsequently receive another CMA, you should notify the creditor; you should return the new arrestment to the creditor, together with details of the name and address of the first creditor, the date and place of execution, and the daily rate of maintenance specified in the current maintenance arrestment schedule
- if two or more of the same type of arrestment arrive on the same day, you should operate the one known to have been sent first. If you do not know which one was sent first, you may decide which arrestment to operate.

A CAO always recalls (cancels) an existing EA or an existing Current Maintenance Arrestment. This means that if you are already operating a CAO, and you are contacted by a creditor attempting to serve an EA or CMA, you should tell the creditor which court made the CAO so that he can apply for his debt to be included.

Priority check guide for employers in Scotland



Appendices

Appendix A

Definition of earnings:

Attachment of Earnings Act 1971 (section 24) (England and Wales)

Child Support (Collection and Enforcement) Regulations (England and Wales, Scotland) 1992

Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

Appendix B

Definition of earnings:

Judgments Enforcement (Northern Ireland) Order 1981 (Schedule 1)

Magistrates' Courts (Northern Ireland) Order 1981

Appendix C

Definition of earnings:

Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613), as amended by SI 1999/534, 2003/522, 2003/738 and 2005/2866)

Appendix D

Definition of earnings:

Debtors (Scotland) Act 1987 (section 73)

Appendix A

Attachment of Earnings Act (section 24) (England and Wales) 1971

Child Support (Collection and Enforcement) Regulations (England and Wales, Scotland) 1992

Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992

define earnings by way of

- wages or salary (including any fees, bonuses, commission, overtime pay or other emoluments payable in addition to wages, or salary payable under a contract of service)
- pension (including an annuity in respect of past service, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment)
- statutory sick pay (the 1971 Act was amended to include this by Schedule 4 of the Social Security Act 1984).

exclude from earnings

- a tax credit (within the meaning of the Tax Credits Act 2002)
- pension or allowances in respect of disablement or disability
- pay or allowances to the debtor as a member of Her Majesty's forces; unless payable as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)*
- except in relation to a maintenance order, wages¹ payable to a person as a seaman², other than wages payable to him as a seaman of a fishing boat³ (this provision is excluded from the Child Support (Collection and Enforcement) Regulations 1992 because they relate to maintenance).

Note: ¹ 'wages' includes emoluments.

² 'seaman' includes every person (except masters and pilots) employed or engaged in any capacity on board any ship.

³ 'fishing boat' means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing or in the sea-fishing service.

- sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom
- pension, allowances or benefit payable under any enactment relating to social security (e.g. statutory maternity pay, statutory paternity pay and statutory adoption pay) guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993).

define the residue as attachable after the following deductions

- income tax (PAYE)
- primary class I contributions under Part I of the Social Security Contributions and Benefits Act 1992 (National Insurance)

* The Armed Forces Act 2006 at sections 341 and 342 is the authority to make deductions from salaries

- amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sums:
 - to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age or
 - to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise, whether with or without any further or other benefit.
Note this does not include Free Standing Additional Voluntary Contributions (FSAVC)

Appendix B

Judgments Enforcement (Northern Ireland) Order 1981 (Schedule 1)

Magistrates' Courts (Northern Ireland) Order 1981

define earnings by way of

- wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages, or salary under a contract of service)
- pension (including an annuity in respect of past service, whether or not rendered to the person paying the annuity, and including payment by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment)
- statutory sick pay.

exclude from earnings

- sums payable by any public department of a territory outside the United Kingdom
- pay or allowances payable to the debtor as a member of Her Majesty's forces¹
- pension, allowances or benefit payable under any of the following statutory provisions relating to social security
- Family Income Supplements Act (Northern Ireland) 1971
- Social Security (Northern Ireland) Acts 1975 – 1980
- Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975
- Child Benefit (Northern Ireland) Order 1975
- Supplementary Benefits (Northern Ireland) Order 1977
- guaranteed minimum pension within the meaning of the Social Security Pensions (Northern Ireland) Order 1975 provided by an occupational pension scheme
- pension or allowances payable in respect of disablement or disability.

Note: The Judgments Enforcement (Northern Ireland) Order 1981 also excludes, subject to Article 97(2), wages such as are mentioned in section 11(1) of the Merchant Shipping Act 1970 (wages due or accruing to a seaman employed in a ship registered in the United Kingdom), other than wages payable to a person as a seaman of a fishing vessel.

define the residue as attachable after the following deductions

- income tax (PAYE)
- primary class I contributions under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (National Insurance)
- amounts deductible under any statutory provision, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme as defined by Article 27 (1) of the Wages (Northern Ireland) Order 1988.

¹ The Armed Forces Act 2006 at sections 341 and 342 is the authority to make deductions from salaries

Appendix C

Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613), as amended by SI 1999/534, 2003/522, 2003/738 and 2005/2866).

defines earnings by way of:

- wages or salary (including any fees, bonuses, commission, overtime pay or other emoluments payable in addition to wages or salary payable under a contract of service)
- statutory sick pay.

excludes from earnings

- sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom
- pay or allowances payable to the debtor as a member of Her Majesty's forces, other than pay of allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)¹
- allowances or benefit payable under any enactment relating to social security
- tax credits within the meaning of the Tax Credits Act 2002
- allowances payable in respect of disablement or disability and
- wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat.

defines the residue as attachable after the following deductions

- income tax (PAYE);
- primary class I contributions under Part I of the Social Security Contributions and Benefits Act 1992
- amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sum
 - (i) to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or
 - (ii) to the personal representatives or the widows, widowers, surviving civil partners, relatives or dependants of such persons on their death or otherwise, whether with or without any further or other benefits
- any deduction with a higher priority.

¹ The Armed Forces Act 2006 at sections 341 and 342 is the authority to make deductions from salaries

Appendix D

Debtors (Scotland) Act 1987 (section 73)

defines earnings by way of ;

- wages or salary
- fees, bonuses, commission or other emoluments payable under a contract of service or apprenticeship
- a pension including a pension declared to be alimentary, an annuity in respect of past services (whether or not the services were rendered to the person paying the annuity), and any periodical payments by way of compensation for the loss, abolition, relinquishment or diminution in earnings of any office or employment
- statutory sick pay.

excludes from earnings

- a pension or allowance in respect of disablement or disability
- any sum the assignation of which is precluded by section 203 of the Army Act 1955 or section 205 of the Air Force Act 1955, or any like sum payable to a member of the naval forces of the Crown, or to a member of any women's service administered by Defence Council (unless payable as a special member of a Reserve Force (within the meaning of the Reserve Forces Act 1996))
- any occupational pension payable under any enactment which precludes the assignation of the pension or exempts it from diligence
- allowance or benefit payable under any enactment relating to social security (e.g. statutory maternity pay, statutory paternity pay and statutory adoption pay)
- guaranteed minimum pension with the meaning of the Social Security Pensions Act 1975
- a redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978.

defines the residue as attachable after the following deductions

- income tax (PAYE)
- primary class I contributions under Part I of the Social Security Contributions and Benefits Act 1992 (National Insurance)
- amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sums:
 - to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or
 - to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise, whether with or without any further or other benefit. Note this does not include Free Standing Additional Voluntary Contributions (FSAVCs).
- any amount deductible by virtue of a deduction from earnings order which, in terms of regulations made under section 32(4)(c) of the Child Support Act 1991, has priority over diligences against earnings.

Glossary

Arrestable or Attachable or Deductible earnings

Earnings from which a deduction under an order should be made (see also Figure 2).

Attachment of Earnings Order (AEO)

An order made by the High Court, a county court or a magistrates' court under the Attachment of Earnings Act 1971 to recover civil debts, fines or maintenance (in England and Wales), requiring an employer to make regular deductions from an employee's earnings and to send them to the court that made the order. Also an order made (in Northern Ireland) under the Judgments Enforcement (Northern Ireland) Order 1981 to recover civil debts and under the Magistrates' Courts (Northern Ireland) Order 1981 to recover maintenance.

BACS

Banks Automated Clearing System

Block

'prevent the operation of'. For example, CCAEOs made before 1 April 1993 prevent the operation of (block) subsequent CCAEOs; employers cannot make deductions under the later orders until the first order has been totally paid.

Centralised Attachment of Earnings Payment System (CAPS)

A centralised method of payment collection on all single county court attachment of earnings cases whether they are for debt or maintenance.

Child Support Agency (CSA)

An Executive Agency of the Department for Work and Pensions responsible for collecting child maintenance.

Civil debt

For example, an unpaid credit card debt, or utility bill, or money owed for work done.

Claim number

Each court action is allocated a number for identification. You must quote this in all correspondence with the court.

Conjoined Arrestment Order (CAO)

An order made by a Sheriff Court or the Court Session (in Scotland) combining two or more arrestment orders (including maintenance arrestment orders) requiring an employer to make deductions from an employee's earnings and to send them to the court that made the conjoined order.

Consolidation Attachment of Earnings Order (CAEO)

An order made under the Attachment of Earnings Act 1971 where an employee owes more than one civil debt, requiring an employer to make deductions from an employee's earnings and to send them to the court that made the consolidated order.

Council Tax Attachment of Earnings Order (CTAEO)

An order sent out by an English or Welsh local authority for the recovery of council tax arrears, requiring an employer to make regular deductions from an employee's earnings and to send them to the local authority that made the order.

County Court

Court in England and Wales handling the majority of civil cases.

Court of Session

The highest court in Scotland for civil proceedings.

Creditor

A person or body to whom money is owed.

Current Maintenance Arrestment (CMA)

An arrestment of earnings to recover maintenance in respect of order made by a Sheriff Court or the Court of Session (in Scotland). It requires an employer to make regular deductions from an employee's earnings and to send them to the creditor named on the order.

Defaulter

A person who owes a sum of money

Debt Arrangement Scheme

The Debt Arrangement Scheme (DAS) was introduced in Scotland at the end of 2004 to help and protect debtors who have multiple debts and who have surplus income from which payments can be made on a regular basis.

Deduction from Earnings Order (DEO)

An order made under the Child Support (Collection and Enforcement) Regulations 1992 for the recovery of child maintenance, requiring an employer to make regular deductions from an employee's earnings and to send them to the Child Support Agency office that made the order.

Discharge

When an order is fully paid or an employee leaves your employment, the court, Agency or local authority will cancel (discharge) the order.

Earnings Arrestment (EA)

A diligence to enforce an order made by a Sheriff Court or the Court of Session in Scotland to recover civil debts or fines, requiring an employer to make regular deductions from an employee's earnings and send them to the creditor named on the order.

Employer

Under the Attachment of Earnings Act 1971, you are the debtor's employer (in England and Wales) if you pay him earnings, but only if you pay him as a principal (not as an agent for somebody else). Under the Debtors (Scotland) Act 1987, 'employer' (in Scotland) means 'any person who pays earnings to a debtor under a contract of service or apprenticeship', any person paying a pension (as defined in section 73(2) of the Act) to the debtor, and, where the employee is an officer of the Crown, the chief officer in Scotland of the department or other body concerned. 'Employer' is not defined by the Child Support or Council Tax Regulations.

Enforcement of Judgments Office (EJO)

The central office in Northern Ireland to which creditors can apply if they have not been paid money owed following a court judgment.

Finance reference number

The number on a Deduction from Earnings Order that identifies the child to whom payment should be directed. This must be quoted on any payments sent under a DEO.

Fine

A financial penalty imposed by a magistrates' court on a person convicted of an offence, for example, non-payment of a TV licence or a road traffic offence.

High Court

Civil court in England and Wales, based at the Royal Courts of Justice in London, and at regional District Registries, dealing with more complex cases. It is split into three divisions. The Family Division deals with divorce and matrimonial matters. The equivalent court in Northern Ireland is the Supreme Court.

Income Payment Order

The Insolvency Act 1986 provides that the trustee can apply to the court for an order that the bankrupt (or his/her employer) makes regular payments from his/her income into the estate from 'surplus' income.

Income Support Deduction Notice

Employees returning to work after a trade dispute may be able to get Income Support (IS) for the first 15 days. This payment will be deducted from their wages over the next 6 months by the employer by means of an Income Support Deduction Notice (ISDN).

Income Payment Agreement

Introduced by the Enterprise Act 2002 to run alongside Income Payment Orders. IPAs are entered into voluntarily but are binding agreements between the Official Receiver or the trustee, and the bankrupt, that the contributions will be made.

Liable person

Under the Child Support Act 1991, someone against whom a Deduction from Earnings Order has been made for failing to pay child maintenance is known as a 'liable person'.

Magistrates' court

Lowest level criminal court in England, Wales and Northern Ireland. Magistrates' courts also have a limited jurisdiction in civil matters relating to debts and family proceedings (including the making of maintenance orders).

Maintenance

The amount of money awarded by a court to be paid to a former spouse for his or her upkeep and/or that of any children.

Net earnings

Earnings remaining after you have deducted income tax, National Insurance, and contributions to a superannuation scheme, but not deductions under an attachment order.

Non-priority order

Defined in this guide as an order made under the Attachment of Earnings Act 1971 for the recovery of a civil debt.

Normal deduction rate (NDR)

The amount that the court calculates is reasonable to pay your employee's debts, or, in the case of an order for the payment of maintenance, the amount the court or Agency considers is necessary and reasonable for the maintenance of a child or spouse.

Priority order

Defined in this guide as an order made under the Attachment of Earnings Act 1971 for the recovery of fines or maintenance, or as a Deduction from Earnings Order.

Protected earnings rate (PER) or protected earnings proportions (PEP)

The amount that the court or Agency calculates is necessary for your employee for food, rent or mortgage, water, gas or electricity, and other basic family and household bills.

Recall

When an order is fully paid or an employee leaves your employment, the Sheriff Court or Court of Session will recall (cancel) the order.

Salary Sacrifice

Varying the employee's terms and conditions as it relates to remuneration. It is, therefore, a matter for agreement between the employer and employee.

Sheriff Court

Court in Scotland handling the majority of civil cases; intermediate court for criminal proceedings.

Acronyms

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| AEO | Attachment of Earnings Order |
| CAEO | Combined Attachment of Earnings Order |
| CAO | Conjoined Arrestment Order |
| CAPS | Centralised Attachment of Earnings Payment Scheme |
| CMA | Current Maintenance Arrestment |
| CSA | Child Support Agency |
| CTAEO | Council Tax Attachment of Earnings Order |
| DAS | Debt Arrangement Scheme |
| DEO | Deduction of Earnings Order |
| DSD | Department for Social Development |
| DWP | Department for Work and Pensions |
| EA | Earnings Arrestment |
| EJO | Enforcement of Judgements Office (Northern Ireland) |
| HMCS | Her Majesty's Courts Service |
| HMRC | Her Majesty's Revenue and Customs |
| IPA | Income Payments Agreement |
| IPO | Income Payments Order |
| IS | Income Support |
| ISDN | Income Support Deduction Notice |
| NDR | Normal Deduction Rate |
| PER | Protected Earnings Rate |
| PEP | Protected Earnings Proportion |

