

Council Tax Attachment of Earnings Order

Guidance Notes for Employers

1. What is an Attachment of Earnings Order and why has it been sent?

An attachment of Earnings Order is an instruction to make deductions from the earning of an employee who has defaulted in paying their Council Tax. The Order has been sent to you because it appears that the named person in the Order is in your employment.

2. What must the employer do?

If the person named on the Order is an employee, then you **must** make deductions from their earnings and pay the amounts deducted to North Warwickshire Borough Council by the 19th day of the month following the month in which the deduction was made. For example, deductions made for June should be paid to North Warwickshire Borough Council by 19th July.

3. Does my employee know that I have to deduct money from their earnings?

A copy of the Order, together with a table showing how much and when the payments shall be taken has been sent to your employee. Guidance notes have also been sent to the person named on the order.

4. Do I have to tell the employee each time I make a deduction?

Yes. Every time a deduction is made under this Order, you must give the employee a written statement of the amount which has so far been deducted, including the amount deducted towards any of your administrative costs and the outstanding balance to be paid to North Warwickshire Borough Council. The notice must either be issued with the next pay statement or pay slip after the deduction, or if a pay statement of pay slip is not normally issued, as soon as possible after the deduction is made. If you do not provide such a statement, you can be prosecuted and fined.

5. How long do I have to make deductions for?

You must make deductions on every normal pay day until:

- The amount stated in the Order has been paid in full, or
- The person named on the Order leaves your employment, or
- The Council tells you the Order has been discharged or cancelled.

6. What happens if I do not comply with the Order?

Failure to comply is a criminal offence punishable by a fine.

7. How much will be deducted?

Deductions are based on Net Pay, which may not be the same as take home pay. For the purposes of the Order, net earnings means after deductions for:

- i) Income Tax
- ii) Primary Class 1 National Insurance Contributions
- iii) Superannuation contributions and
- iv) Any deduction as a result of an Attachment of Earnings with a higher priority

8. How do I calculate the deductions?

Please use the table as per the original Order document depending on whether your employee is paid weekly, monthly or daily.

9. What do I deduct if there is an advance for holiday pay?

The amount to be deducted in the combined total of:

The amount that would have been deducted from the net pay if there had been no holiday pay, and ii) The amounts that would have been deducted if the amount advanced had been paid on the normal pay day or days.

10. What do I do if there is already a current Attachment of Earnings Order in force?

Generally, Attachment of Earnings Orders under the Regulations and “deduction orders” (i.e. orders under the Attachment of Earnings Act 1971 or the Child Support Act 1991) are to be dealt with by employers in chronological order, with later orders processed on the basis that earnings are what is left after deductions have been made in respect of an earlier Order or Orders. However, a Council Tax Attachment of Earnings Order will have priority over 1971 Act order which deal with judgement debts or payments under an Administration Order.

Under a change in regulations, only two Orders can be in place for North Warwickshire Borough Council at any one time. If you receive another Order, you must deal with them in order, deducting the appropriate amount in respect of the first Order and then deducting this figure to arrive at the net earnings figure for the second Order.

11. What if the person named on the Order has never worked here or stops working here?

You must inform the Council that this is the case within 14 days of the Order if the person has never worked for you or, if they leave your employment, within 14 days of the last date they worked for you. Please e-mail counciltax@northwarks.gov.uk

12. Can deductions be made from Statutory Maternity Pay (SMP)?

No, because SMP is payable under the Social Security Contributions & Benefits Act 1992, therefore it is specifically excluded from the Attachment of Earnings Orders.

13. Can deductions be made from Redundancy Payments?

No, Redundancy payments cannot be subject of an Attachment of Earnings Order as they not salary, fee or profit from employment.

Regulation 32 & 37 to 42 of the Council Tax (Administration and Enforcement) Regulations 1992 (as amended):

Interpretation and application of Part VI 32

(1) In this Part

“attachment of allowances order” means an order under regulation 44;

“attachment of earnings order” means an order under regulation 37;

“charging order” means an order under regulation 50;

“debtor” means a person against whom a liability order has been made;

“earnings” means sums payable to a person –

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service); or

(b) by way of statutory sick pay, earnings, but, in so far as the following would otherwise be treated as earnings, they shall not be treated as such:

(i) sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom;

(ii) pay or allowances payable to the debtor as a member of Her Majesty’s forces, other than pay or allowances payable by his employer as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996) (iii) allowances or benefit payable under the Social Security Acts;

(iiia) a tax credit (within the meaning of the Tax Credits Act 2002)

(iv) allowances payable in respect of disablement or disability; and

(v) wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat;

“the Income Support Regulations” means the Council Tax (Deductions from Income Support) Regulations 1993

“liability order” means an order under regulation 34 or regulation 36A(5); and

“net earnings” in relation to an employment means the residue of earnings payable under the employment after deduction by the employer of —

- (a) income tax;
- (b) primary Class 1 contributions under Part I of the Social Security Contributions and Benefits Act 1992; and
- (c) 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, and where an order under regulation 32 (making of attachment earnings order) of the Community Charge (Administration and Enforcement) Regulations 1989 made before the making of the attachment of earnings order concerned remains in force

(d) any amount required to be deducted in accordance with that order.

(2) In sub-paragraph (v) of the definition of “earnings” in paragraph (1) above expressions used in the Merchant Shipping Act 1894 have the same meanings as in that Act.

(3) Regulations 33 to 53 apply for the recovery of a sum which has become payable to a billing authority under Part V and which has not been paid; but their application in relation to a sum for which persons are jointly and severally liable under that Part is subject to the provisions of regulation 54 (joint and several liability).

(4) References in this Part to a sum which has become payable and which has not been paid include references to a sum forming part of a larger sum which has become payable and the other part of which has been paid

(5) Any reference to this Part to the day on or time at which a notice is issued, is a reference —

(a) if the notice is served in the manner described in Section 233(2) of the Local Government Act 1972 by being left at, or sent by post to, a persons proper address, to the day on or time at which it is so left or posted, or

(b) in any other case, to the day on or time at which the notice is served

Making of attachment of earnings order 37 —

- (1) Where a Liability Order has been made and the debtor against whom it was made is an individual, the authority which applied for the Order may subject to paragraph (4) make an Order under this regulation to secure the payment of the appropriate amount

(1A) For the purposes of this regulation the appropriate amount 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) where the authority concerned has sought to levy an amount by distress and sale of the debtor's goods under regulation 45 and the person making the distress has reported that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount –

(i) a sum determined in accordance with Schedule 5 in respect of charges connected with the distress, and

(ii) if the authority has applied for the issue of a warrant committing the debtor to prison in accordance with regulation 47, the authority's reasonable costs incurred up to the time of the making of the Order under regulation 37, in making one or more of the applications referred to in Schedule 6, but not exceeding the amount specified for that application in Schedule 6".

(2) An Order under this regulation—

(a) shall be in the form specified in (and accordingly contain the matters specified in) Schedule 3; and

(b) shall remain in force until discharged under regulation 41(2) or the whole amount to which it relates has been paid (whether by attachment of earnings or otherwise).

(3) The authority may serve a copy of the Order on a person who appears to the authority to have the debtor in his employment; and a person on whom it is so served who has the debtor in his employment shall comply with it.

(4) No Order may be made under this regulation by an authority if the effect would be that the number of Orders for the time being in force made by that authority in relation to the debtor in question exceeded two.

Deductions under Attachment of Earnings Order 38 —

(1) Subject to paragraphs (2) and (3), the sum to be deducted by an employer under an attachment of earnings Order on any pay-day shall be—

(a) where the debtor's earnings from the employer are payable weekly, a sum equal to the appropriate percentage of the net earnings otherwise payable on that pay-day; and for this purpose the appropriate percentage is the percentage (or percentages) specified in column 2 of Table A in Schedule 4 in relation to the band in column 1 of that Table within which the net earnings fall;

(b) where his earnings from the employer are payable monthly, a sum equal to the appropriate percentage of the net earnings otherwise payable on that pay-day; and for this purpose the appropriate percentage is the percentage (or percentages) specified in column 2 of Table B in that Schedule 4 in relation to the band in column 1 of that Table within which the net earnings fall;

(c) where his earnings from the employer are payable at regular intervals of a whole number of weeks or months, the sum arrived at by —

(i) calculating what would be his weekly or monthly net earnings by dividing the net earnings payable to him by the employer on the pay-day by that whole number (of weeks or months, as the case may be),
(ii) ascertaining the percentage (or percentages) specified in column 2 of Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) in Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (i) fall, and
(iii) calculating the sum which equals the appropriate percentage (or percentages) of the notional net earnings for any of those weeks or months and multiplying that sum by the whole number of weeks or months, as appropriate.

(2) Where paragraph (1) applies and the amount to be paid to the debtor on any pay-day includes an advance in respect of future pay, the sum to be deducted on that pay-day shall be the aggregate of the amount which would otherwise fall to be deducted under paragraph (1) and —

(a) where the amount advanced would otherwise have been paid on a single pay-day, the sum which would have been deducted on that pay-day in accordance with paragraph (1) if the amount advanced had not been the amount of net earnings on that day; or

(b) where the amount advanced would otherwise have been paid on more than one pay-day, the sums which would have been deducted on each of the relevant pay-days in accordance with paragraph (1) if —

(i) an equal proportion of the amount advanced had been paid on each of those days; and

(ii) the net earnings of the debtor on each of those days had been an amount equal to that proportion.

(3) Where the amount payable to the debtor on any pay-day is reduced by reason of an earlier advance of pay or by reason of the repayment by the debtor of a loan made to him by his employer for any purpose, the net earnings of the debtor on that day shall, for the purposes of paragraph (1), be the amount defined in regulation 32(1) less the amount of the deduction.

(4) Subject to paragraphs (5) and (6), where the debtor's earnings from the employer are payable at regular intervals other than at intervals to which paragraph (1) applies, the sum to be deducted on any pay-day shall be arrived at by —

(a) calculating what would be his daily net earnings by dividing the net earnings payable to him by the employer on the pay-day by the number of days in the interval,

(b) ascertaining the percentage (or percentages) specified in column 2 of Table C in Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under subparagraph (a) fall, and

(c) calculating the sum which equals the appropriate percentage (or percentages) of the notional daily net earnings and multiplying that sum by the number of days in the interval.

(5) Where the debtor's earnings are payable as mentioned in paragraph (4), and the amount to be paid to the debtor on any pay-day includes an amount advanced in respect of future pay, the amount of the debtor's notional net earnings under sub-paragraph (a) of that paragraph shall be calculated in accordance with the formula:- $\frac{A + B}{C + D}$

$$C + D$$

where

A is the amount of net earnings payable to him on that pay-day (exclusive of the amount advanced);

B is the amount advanced;

C is the number of days in the period for which the amount of net earnings is payable; and

D is the number of days in the period for which, but for the agreement to pay in advance, the amount advanced would have been payable.

(6) Paragraph (3) applies in relation to paragraph (4) as it applies in relation to paragraph (1).

(7) Where earnings are payable to a debtor by the employer by 2 or more series of payments at regular intervals —

(a) if some or all of the intervals are of different lengths —

(i) for the purpose of arriving at the sum to be deducted, whichever of paragraphs (1), (2), (3), (4), (5) and (6) is appropriate shall apply to the series with the shortest interval (or, if there is more than one series with the shortest interval, such one of those series as the employer may choose), and

(ii) in relation to the earnings payable in every other series, the sum to be deducted shall be 20 per cent. of the net earnings or, where on any pay-day an amount advanced is also paid, 20 per cent. of the aggregate of the net earnings and the amount advanced;

(b) if all of the intervals are of the same length, whichever of paragraphs (1), (2), (3), (4), (5) and (6) is appropriate shall apply to such series as the employer may choose and sub-paragraph (a)(ii) shall apply to every other series, above as it applies in relation to paragraph (1).

(8) Subject to paragraphs (9) and (10), where the debtor's earnings from the employer are payable at irregular intervals, the sums to be deducted on any pay-day shall be arrived at by—

(a) calculating what would be his daily net earnings by dividing the net earnings payable to him by the employer on the pay-day —

(i) by the number of days since earnings were last payable by the employer to him, or

(ii) if the earnings are the first earnings to be payable by the employer to him with respect to the employment in question, by the number of days since he began the employment;

(b) ascertaining the percentage (or percentages) specified in column 2 of Table C of Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under subparagraph (a) fall; and
(c) calculating the sum which equals the appropriate percentage (or percentages) of the daily net earnings and multiplying that sum by the same number as that of the divisor for the purposes of the calculation mentioned in sub-paragraph (a).

(9) Where on the same pay-day there are payable to the debtor by the employer both earnings payable at regular intervals and earnings payable at irregular intervals, for the purpose of arriving at the sum to be deducted on the pay-day under the foregoing provisions of this regulation all the earnings shall be aggregated and treated as earnings payable at the regular interval.

(10) Where there are earnings payable to the debtor by the employer at regular intervals on one pay-day, and earnings are payable by the employer to him at irregular intervals on a different pay-day, the sum to be deducted on each of the pay-days on which the earnings which are payable at irregular intervals are so payable shall be 20 per cent. of the net earnings payable to him on the day.

Attachment of Earnings Orders: ancillary powers and duties of employers and others served 39 —

(1) An employer who deducts and pays amounts under an attachment of earnings Order may, on each occasion that he makes such a deduction, also deduct from the debtor's earnings the sum of one pound towards his administrative costs.

(2) An employer who deducts and pays amounts under an attachment of earnings Order shall, in accordance with paragraph (3), notify the debtor in writing of —
(a) the total amount of the sums (including sums deducted under paragraph (1)) deducted under the Order up to the time of the notification; or
(b) the total amount of the sums (including sums deducted under paragraph (1)) that will fall to be so deducted after that time.

(3) A notification under paragraph (2) must be given at the time that the pay statement given by the employer to the debtor next after a deduction has been made is so given, or if no such statements are usually issued by the employer, as soon as practicable after a deduction has been made.

(4) A person on whom a copy of an Attachment of Earnings Order has been served shall, in accordance with paragraph (5), notify in writing the authority which made the Order if he does not have the debtor against whom it was made in his employment or the debtor subsequently ceases to be in his employment.

(5) A notification under paragraph (4) must be given within 14 days of the day on which the copy of the Order was served on him or the debtor ceased to be in his employment (as the case may be).

(6) While an Attachment of Earnings Order is in force, any person who becomes the debtor's employer and knows that the order is in force and by what authority it was made shall notify that authority in writing that he is the debtor's employer.

(7) A notification under paragraph (6) must be given within 14 days of the day on which the debtor became the person's employee or of the day on which the person first knows that the Order is in force and the identity of the authority by which it was made, whichever is the later

Attachment of Earnings Orders: duties of debtor 40 —

(1) While an Attachment of Earnings Order is in force, the debtor in respect of whom the order has been made shall notify in writing the authority which made it of each occasion when he leaves an employment or becomes employed or re-employed, and (in a case where he becomes so employed or reemployed) shall include in the notification a statement of —

(a) his earnings and (so far as he is able) expected earnings from the employment concerned,

(b) the deductions and (so far as he is able) expected deductions from such earnings —

(i) in respect of income tax;

(ii) in respect of primary Class 1 contributions under Part I of the Social Security Contributions and Benefits Act 1992;

(iii) for the purposes of such a superannuation scheme as is mentioned in the definition of "net earnings" in regulation 32(1),

(c) the name and address of the employer, and

(d) his work or identity number in the employment (if any).

(2) A notification under paragraph (1) must be given within 14 days of the day on which the debtor leaves or commences (or recommences) the employment (as the case may be), or (if later) the day on which he is informed by the authority that the Order has been made.

Attachment of Earnings Orders: ancillary powers and duties of authority 41 —

(1) Where the whole amount to which an attachment of earnings Order relates has been paid (whether by attachment of earnings or otherwise), the authority by which it was made shall give notice of the fact to any person who appears to it to have the debtor in his employment and who has been served with a copy of the Order.

(2) The authority by which an Attachment of Earnings Order was made may, on its own account or on the application of the debtor or an employer of the debtor, make an order discharging the Attachment of Earnings Order; and if it does so it shall give notice of that fact to any person who appears to it to have the debtor in his employment and who has been served with a copy of the Order.

(3) If an authority serves a copy of an Attachment of Earnings Order in accordance with regulation 37(3), it shall (unless it has previously done so) also serve a copy of the Order on the debtor

Priority as between Orders 42 —

(1) Where an employer would, but for this paragraph, be obliged to make deductions on any pay-day under more than one Attachment of Earnings Order, he shall –

(a) deal with the Orders according to the respective dates on which they were made, disregarding any later Order until an earlier one has been dealt with; and

(b) deal with any later Order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier Order.

(2) Subject to paragraph (3), where an employer would, but for this paragraph, be obliged to comply with one or more Attachment of Earnings Order and with one or more deduction Order, he shall deal with the Orders according to the respective dates on which they were made in like manner as under paragraph (1).

(3) An employer shall not deal with a deduction Order made either wholly or in part in respect of the payment of a judgement debt or payments under an Administration Order until he has dealt with the Attachment of Earnings Order or Orders and any other deduction order.

(4) In this regulation "deduction order" means an order under the Attachment of Earnings Act 1971 or section 31 (2) (deductions from earnings orders) of the Child Support Act 1991.