

Housing Benefit and Council Tax Benefit

General Information Bulletin

Department for Work and Pensions, 1st Floor, Caxton House, Tothill Street, London, SW1H 9NA
<http://www.dwp.gov.uk/housingbenefit/>

HB/CTB G2/2010

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Contact	Queries about the <ul style="list-style-type: none">• technical content of this bulletin, contact details are given at the end of each article• distribution of this bulletin, contact Corporate Document Services Ltd Orderline<ul style="list-style-type: none">- Email: orderline@cds.co.uk• bulletin in general, contact Kath Murphy<ul style="list-style-type: none">- Email: Kath.Murphy@dwp.gsi.gov.uk
Who should read	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
Action	For information

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HB/CTB circular A26/2009 - clarification

- 1 We have been asked to explain if *para 15* of the recently released *HB/CTB Circular A26/2009* <http://dwp.gov.uk/docs/a26-2009.pdf> which clarifies when a tenant is considered to be eight weeks in arrears with their rent applies to all rent allowance cases.
- 2 Although the purpose of *Circular A26/2009* was mainly intended to alert you to changes to the Local Housing Allowance (LHA) guidance the eight weeks rent arrears clarification would affect any rent allowance case where HB Regulation 95 (1) (b) applies. You should therefore annotate *Chapter A6 (para 6.186)* of the *HB/CTB Guidance Manual* with a cross reference to *HB/CTB Circular A26/2009*.

Further queries

- 3 If you have any further queries, please contact

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Right to reside and pregnancy

- 4 When considering the right to reside and pregnancy, the key question to be asked is whether someone is a worker.
- 5 European Economic Accession (EEA) nationals on maternity leave, paid and unpaid, may still have worker status as long as they are still employed and can provide evidence of their contract during the maternity period which is set out in law. If the employee wishes to take longer than the legal maternity period, they must show that they have a contractual right to remain in employment even whilst not working.
- 6 It is important to distinguish this right to reside (as a worker) from retaining worker status when temporarily unavailable for work due to an incapacity for work. Although, it is possible for an EEA national to have a right to reside for income-related benefits if they are temporarily unable to work due to sickness, pregnancy is not usually considered an illness unless the individual has a pregnancy-related illness.

Unemployed

- 7 There is nothing in EC Directive 2004/38/EC which allows worker status to be retained if an EEA national leaves their employment during pregnancy or during a period of maternity leave. If they are the family member of an EEA national who is exercising European Union (EU) rights (e.g. as a worker or self-employed person or a person with a right of permanent residence) they will have a right to reside during this period for HB/CTB. Receipt of Maternity Allowance (MA) does not passport them onto HB/CTB or indicate that they have a right to reside as people claiming MA are not required to demonstrate a right to reside in order to be entitled to it.

Employed

- 8 EEA nationals who are employed, but on paid or unpaid maternity leave, still have worker status even though they are not at work. If they apply for HB/CTB during this period they must provide a copy of their contract and confirmation that they are still employed. There may also be other forms of contract, particularly in the case agency workers where it may not be clear if they still have worker status. For these cases, you should obtain as much information surrounding the contract and contact the Persons from Abroad (PFA) Team. A8 and A2 nationals on maternity leave also have a right to reside as long as, in addition to their contract, they provide their worker registration card and certificate (A8 nationals) or Worker Authorisation Scheme card (A2 nationals).

Retaining worker status whilst self-employed

- 9 A8 and A2 nationals who are self-employed have the same rights as other EEA nationals when self-employed and are not subject to the Worker Registration Scheme / Worker Authorisation Scheme. Whilst they are self-employed, they have a right to reside for HB/CTB purposes.
- 10 Self-employed A8/A2 nationals do not gain full EEA status after working 12 months as a self-employed person. If they cease to be self-employed then they become subject to the Accession Regulations if they haven't previously completed 12 months continuous employment as a registered or authorised worker. Whilst they are unemployed they are required to be self-sufficient and do not have a right to reside as a jobseeker.

Queries

- 11 A list of Frequently Asked Questions about A2/A8 nationals is provided at Annex A as a separate attachment to this bulletin.
- 12 For further advice or information on this item please contact richard.chia@dwp.gsi.gov.uk