

Circular Reference:		G2/2010	
Subject:	A26 Clarification Right to Reside and Pregnancy Self-employed and worker status	Effective Date:	Immediate
Summary			
A26 Clarification			
<p>The bulletin confirms that the guidance given in circular A26/09 about calculating the point at which a tenant is 8 weeks or more in arrears, does not only apply to LHA cases but to all rent allowance cases. A26/09 explained that the DWP now adopts the view set out during the First Tier Tribunal (032/09/00932) heard on 5th October 2009, that the tenant is in arrears when the date on which rent is due has passed, regardless of whether that rent payment is in arrears or advance. This means that a tenant who makes payments in advance will be in arrears once the payment date has passed and so could be in 8 weeks or more arrears before 8 weeks have actually elapsed.</p>			
Right to Reside and Pregnancy			
<p>Clarification is provided about how pregnancy affects a person's right to reside and that the most significant factor is whether or not the person still counts as a worker. A person retains their right to reside during pregnancy if:</p>			
<ul style="list-style-type: none">• they are an EEA national who has a contract of employment for a job that they will be returning to;• they are an A2 worker who has a contract of employment for a job that they will be returning to and a Worker Authorisation Scheme card;• they are an A8 worker who has a contract of employment for a job that they will be returning to and has a Worker Registration Card and Certificate.			
<p>Provided that the person remains contractually employed and meets the above criteria, they retain the right to reside during their maternity leave. It does not matter whether they are on paid or unpaid maternity leave. Contact the PFA Team at the DWP for assistance if it is unclear whether the person should still count as employed.</p>			
<p>Someone who leaves their employment during pregnancy is likely to lose their right to reside status because they are no longer a worker. There is no requirement to have a right to reside to be entitled to Maternity Allowance and so someone receiving this benefit is not automatically entitled to HB/CTB. Pregnancy does not count as an illness for establishing that someone retains worker status when they are temporarily incapacitated. The exception to this is if they have a pregnancy related illness. Please note that someone may retain entitlement to HB/CTB during their pregnancy even if they are not a worker, by virtue of them being a family member of an EEA national who has the right of permanent residence, or is themselves a worker or self-employed.</p>			
Self-employed and Worker Status			
<p>The bulletin also clarifies that A2 and A8 nationals are exempt from the Worker Registration and Worker Authorisation Schemes whilst they are self-employed. They have a right to reside during any period of self-employment, just as other EEA nationals do. However, they do not attain full EEA status just by being self-employed for 12 months. They must still complete 12 months registered as a worker under the appropriate scheme for this to be the case. If they haven't completed 12 months as a registered worker they have to be self-sufficient once they stop being self-employed and are unemployed, and cannot be treated as a job seeker.</p>			

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