

Right to Rent – Frequently Asked Questions

1) Do I need to carry out right to rent checks if I started renting to a tenant before the 1st February 2016?

The right to rent provisions are coming into force across England from the 1st February 2016. However, as a result of transitional provisions within the Immigration Act 2014, it will not be necessary to carry out checks on tenants where a tenancy agreement came into force before the 1st February 2016.

2) What about if I renew a tenancy agreement with the same tenants AFTER the 1st February 2016? Will I need to carry out right to rent checks on the tenants then?

If you originally entered into a tenancy agreement with your tenants before the 1st February 2016, and you are renewing your tenancy agreement, you will not have to carry out right to rent checks if:

- the agreement is between the SAME parties; and
- the tenant has always had a right of occupation under the renewed agreement since entering into the original agreement.

However, if even one of the parties changes, or there was a break in the right of occupation, it is a requirement to carry out right to rent checks on those tenants.

3) So if I change the terms of the tenancy with an existing tenant in the same property do I need to carry out a Right To Rent check?

You do not need to carry out a right to rent check as long as the parties to the agreement remain the same, the original agreement was entered into before the 1st February 2016 and there has been a continuous right of occupation by the tenants under the renewed agreement since the original agreement.

4) What about if I renew an agreement in future but the tenancy first came into effect AFTER the 1st February 2016?

Whether a right to rent check is required will depend on how the agreement is being renewed.

If your tenant has an assured shorthold tenancy, when it comes to the end of a fixed term contract, the agreement will automatically move on to a rolling contract. If the tenant remains in the property on a rolling contract basis, then there will be no need to carry out a new right to rent check.

However, if a new fixed term agreement with the tenant is entered into, then it will be necessary to carry out a new right to rent check.

5) How is a “new” tenancy agreement defined?

A new tenancy agreement involving one or more of the original occupiers arises where:

- there is a variation or assignment of the agreement which grants the right to occupy the premises to one or more new occupiers;
- the tenancy is surrendered by one of the occupiers, and a new joint tenancy is agreed between one or more of the original parties and one or more new occupiers;
- a new tenancy agreement is signed between the parties, for example a new fixed term contract after a previous fixed term contract has passed.

However, if the tenancy is extended at the end of a term by the same parties, as a result of a contractual right exercised by the tenant, then this is NOT considered to be a new tenancy agreement. Therefore an agreement which moves onto a rolling contract will not constitute a new tenancy agreement under the scheme.

The right to rent provisions also confirm that a new tenancy agreement will not be considered to have been entered into where it arises:

- by virtue of an order of a court,
- by or under any statutory provision,
- by operation of law

6) If I have someone who is 17 but turns 18 during the life of the tenancy do I need to carry out Right to Rent checks?

No, there is no need to carry out a right to rent check for a tenant who turns 18 whilst the tenancy agreement is in force. It will only be necessary to conduct a check in relation to the child-turned-adult at the point that further checks are required under the scheme.

7) How long in advance of the tenancy starting should I carry out checks?

The right to rent provisions require that checks are carried out no more than 28 days before the tenancy agreement is due to come into effect. However, the code of practice confirms that if a right to rent check demonstrates there is no time limit on the right to rent (which will be the case for British citizens, EEA nationals and those with indefinite leave to remain) then the check can be undertaken at any time before the start of the tenancy agreement.

8) I am letting a property to a student and entering into a tenancy agreement 6 months before the tenants move into the property. When should I carry out a right to rent check?

A provisional right to rent check should be carried out before the tenancy agreement is agreed. If this demonstrates an unlimited right to rent, then there will be no need to carry out any further checks. However, if the right to rent check reveals the tenant only has a time limited right to rent, it will be necessary to ensure that a further right to rent check is carried out no more than 28 days before the tenancy agreement comes into effect.

9) What should I do if I believe the Right to Rent documentation provided is false?

When checking whether a document is genuine, the Landlord should do the following:

- if a document contains a photograph, satisfy themselves that the photograph is of the occupier or prospective occupier;
- if a document contains a date of birth, satisfy himself that the date of birth is consistent with the appearance of the occupier or prospective occupier;
- check that the name on the document matches the tenants name, or if it does not, that they have evidence which explains the difference in name (such as a marriage certificate/deed poll)
- check whether the document has been obviously tampered with.

The Home Office guidance confirms that you only have to be satisfied that the documents which you are checking seem genuine. You will not be penalised if you have been caught out by a good forgery.

If however, you feel that the document that you are inspecting is not a genuine document for good reason, then this means that the tenant has not established a right to rent, and you will be perfectly entitled to look for a different tenant to rent your property to.

10) When do I need to make a report to the Home Office?

If you become aware of a change of circumstances for the tenant which means they no longer have a right to rent, or if a follow up right to rent check reveals that the tenant does not have a right to rent, then you will be required to make a report to the Home Office.

This is done through the Home Office website at www.gov.uk/righttorentchecks and the report must contain the following information:

- The full name, date of birth and nationality of the occupier believed to have no right to rent;
- The address of the premises they are occupying;
- The name and contact address of the landlord;

- Where relevant, the name and contact address of the agent; and
- The date on which the occupier first took up occupation.

As long as such a report is made before the person's time limited right to rent expires, then the Landlord will continue to have a statutory excuse against any fines being imposed on them.