

MUTUAL EXCHANGE POLICY

Our policy sets out:

- Who can exchange (swap)
- How to exchange
- Our reasons for refusing an exchange
- The responsibility for repairs and improvements in an exchange.

Scope

This policy covers all tenancies where a mutual exchange is allowed

Definition

Mutual exchange between two or more parties in which they 'swap' homes. When an exchange takes place residents take responsibility of the property they have swapped into and includes any damage left by the outgoing resident.

Responsibilities

The Head of Housing is responsible for the implementation of this Policy and for staff training. The Lettings Manager and Neighbourhoods Manager-Tenancy are responsible for the operational aspects of this Policy.

Who can exchange?

Residents with a fixed term, assured, or secure tenancy with a Registered Provider or local authority, can apply to exchange in the UK. Starter Tenancies cannot exchange, but can exchange once they convert onto an assured or fixed term tenancy. Assured shorthold residents cannot exchange.

Conditions of the mutual exchange

Where there is a joint tenancy, there must be agreement of the other resident to exchange. If this is not possible, for example if the relationship has broken down, assignment of tenancy could be explored.

When an exchange takes place, a resident will take on the rights and responsibilities of the resident they swap with.

The Localism Act 2011 Pursuant to Sections 158 -159 and Schedule 14, issued new rules, when it comes to exchanges between a fixed term tenancy and lifetime tenancies, namely assured and secure tenancies. The general obligation is that we preserve the right of assured/secure residents to maintain their lifetime tenancies.

Fixed term residents when exchanging with assured/secure residents must give up their tenancies. A new tenancy will be issued in a process called surrender and re-grant (S158). We will offer fixed term residents a new tenancy for the rest of the existing fixed term (with a minimum term of two years) and assured/secure residents a new assured/secure tenancy

(there are grounds in some instances this will be refused – see Grounds for refusal). We will calculate the rent for the fixed term tenant in line with our rent setting policy.

Fixed term residents exchanging with fixed term residents will assign their tenancies for the rest of the fixed term. We will calculate the rent for the fixed term resident in line with our rent setting policy.

If an exchange is sought between our resident with another who is not our resident, their landlord must agree to the exchange.

The table below shows the type of tenancy that a resident will get when they exchange.

Tenancy before exchange		Tenancy after Exchange	
Tenant 1	Tenant 2	Tenant 1	Tenant 2
Secure	Secure	Secure	Secure
Assured	Assured	Assured	Assured
Secure	Assured	Assured	Secure
Assured	Secure	Secure	Assured
Fixed term	Assured	Fixed term	Assured
Fixed term	Secure	Fixed term	Secure

Secured and Assured Tenancies created AFTER 1 April 2012

If an exchange takes place with a flexible or fixed term tenant then the secured/assured tenant loses their security of tenure and the process reverts back to the rule that a person inherits the tenancy of the property that they are transferring into.

How can residents exchange?

Residents can find out about exchanges and residents who want to exchange in the following ways:

- Contacting us
- Using Homeswapper – available online at <http://www.homeswapper.co.uk>
- Advertising in local newsagents

Residents need to find someone to exchange with and make contact with them first. Once a mutual agreement has been reached, we should be contacted. We will request for a mutual exchange application form to be completed by both parties.

Our reasons for refusing an exchange

No exchange must take place with out our written permission. The rights of tenancies will be affected if an exchange takes place without our written permission, and legal action as a last resort in some cases.

A decision will be made within 42 calendar days. A resident will be given 3 months to move from when our decision is made, in extenuating circumstances this might be extended

An exchange may be refused on one or more of the following reasons (grounds) as set out in Schedule 3 of the Housing Act 1985 (modified for assured tenants and fixed term tenants as indicated). The list below is in summary only:

- Ground 1 – if you or the other person applying to exchange, are obliged to give up possession of the home under a court order
- Ground 2 – if you or the other person applying to exchange has outstanding possession proceedings against them, or there is a Notice of Seeking Possession (NOSP) in place for either tenant (whether they are assured, secure or fixed term tenants)
- Ground 2a – if anyone exchanging has in force, or has an application for, any legal action associated with anti-social behaviour - section 191 of the Housing Act 2004
- Ground 3 - if your home is too big for the tenant you are exchanging with. We will not allow our homes to become under-occupied
- Ground 4 – if your home is too small for the tenant you are exchanging with. We will not allow our home to become statutorily overcrowded
- Ground 5 – if your home was let to you because of your employment
- Ground 6 – if the exchange would conflict with our status as a charity
- Grounds 7, 8, and 9 – if the home is unsuitable for the person you want to exchange with because it is adapted for a support need, the other person does not have
- Ground 10 – if the tenant you are exchanging with refuses to become a member of a tenants association, who manage the property.

If there are rent arrears or a breach of tenancy, but without recourse for a Notice of Seeking Possession to be served, the resident will be requested to clear the arrears or fix the breach. This includes disrepair of the home and anti-social behaviour.

If the property is too big (ground 3) for the resident, we will refuse for the following reasons:

- To prevent residents getting into arrears and potentially losing their home due to the bedroom tax (also known as the under-occupation charge).
- Our Tenancy Policy aim to make the best use of stock, and to make sure larger properties are available for families who need them.

In circumstances where a property has more bedrooms than permitted by under the bedroom tax, or we consider it to be substantially more extensive than is reasonably required, we will use the criteria outlined by Government in their bedroom tax calculations to decide if the property is too big.

There are further grounds for refusal introduced under the Localism Act 2011.

Grounds for refusal to surrender and re-grant tenancies under s158

We are not required to grant a fully assured or secure tenancy if the grounds for refusal apply, the grounds are similar to above for withholding consent.

- Ground 1 Rent arrears
- Ground 2 Breach of tenancy
- Ground 3 Existing possession order
- Ground 4 Proceedings commenced for possession of a property let on a secure tenancy and possession sought on Grounds 1-6 of Part 1 to Schedule 2 to the Housing Act 1985 OR NSP served, specifying one or more of those grounds, and is still in force.
- Ground 5 Same as Ground 4 but for assured tenants
- Ground 6 An SPO under ground 2 (Housing Act 1985) or ground 14 (Housing Act 1988) is in force in respect of a relevant tenant or a member of their family OR An application is pending before a court for an injunction under s152 or s153 Housing Act 1996, or
- an ASBO, a demotion order or for possession under grounds 2 or 14
- Ground 7 the property to be let on a new tenancy is substantially more extensive than is reasonable required.
- Ground 8 the property to be let is not reasonably suitable for the tenant's needs.
- Ground 9 the property is in a building that are held mainly for purposes other than housing or is in a cemetery AND the property was let in the consequence of the tenant being in the employment of particular organisation.
- Ground 10 the landlord is a charity and tenancy would conflict with objects.
- Ground 11 The property is adapted AND if new tenancy was granted, there would no longer be such a person living in the property.
- Ground 12 The Landlord is a Housing Association or Housing Trust which lets dwellings only for occupation by persons whose circumstances make it difficult for them to meet their need for housing AND if a new tenancy were granted, there would no longer be such a person residing in the dwelling house.
- Ground 13 the property is provided for persons with special needs AND a social service or special facility is provided in close proximity to those persons AND if a new tenancy were granted, a person with those needs would not be living there.
- Ground 14 the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement.

Repairs and Improvements responsibility

Before an exchange is carried we will:

- Inspect our property
- Confirm the condition
- Advise both residents of their repairs responsibilities and liabilities. We will ask both residents to agree who will complete repairs where it is their responsibility.
- We reserve the right to recharge where damage is caused to the property

A resident will take on the responsibilities of the person that was exchanged with. This includes changes, improvements, or alterations they made to the home. For example, if the resident replaced a bath with a shower. We will not replace it with a bath. We will also disclaim any responsibility for showers over a bath.

Monitoring

We will monitor the number of mutual exchanges through the monthly lettings log and CORE statistics. Performance is reported to the Exec Team twice a year.

Appeal

Any applicant unhappy about a decision relating to a mutual exchange can appeal to the Head of Housing. The Head of Housing will review the decision. If it is upheld, the applicant will be given written reasons for this. If there has been a procedural failure that justifies reversing the original decision, the appeal will be upheld and the exchange approved. If the applicant is still dissatisfied recourse can be sought through the complaints procedure.

Review

We will review our policy every five years or earlier to address legislative, regulatory, best practice or operational issues.

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Reviewed By	Ramesh Malhan	Approval By	Director
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