

# Housing

## Mutual Exchange Policy

October 2024 Teignbridge District Council



## Document Control

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Lead Officer	Name	Graham Davey
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## 1. Purpose

- 1.1 The purpose of this policy is to support residents with housing options, recognising that mutual exchange is an important way of enabling tenants within social housing to move between properties and make best use of housing stock.
- 1.2 It supports tenants to increase their housing option, meet unmet or changed housing needs, and meet regulatory expectations.
- 1.3 The policy sets out the conditions under which a tenant may mutually exchange their tenancy with another tenant.
- 1.4 It also explains any restrictions, and the process for a tenant to appeal a decision where permission has not been granted or they do not agree with any conditions imposed.

## 2. Definitions and Scope

- 2.1 A mutual exchange is the mechanism by which social housing tenants can swap properties without having to make an application for a transfer or new tenancy allocation.
- 2.2 A mutual exchange occurs by way of an Assignment of the tenancy. Assignment is where the tenancy is passed on to someone else. It does not create a new tenancy but passes the existing tenancy to the assignee. Each tenant will therefore take on the terms of the tenancy agreement as well as the home of the person they have exchanged with.

## 3. Statutory and Regulatory Requirements

- 3.1 The legal rights to mutual exchange are complex and are governed by the type of tenancy agreement held by each party and the date it was granted.
- 3.2 The provisions made within the Housing Act 1985<sup>1</sup> and the Localism Act 2012<sup>2</sup> set out the rights to exchange for most tenants, and the factors that can be considered for refusing a mutual exchange application. These are summarised at Appendix 1.
- 3.3 Section 158 of the Localism Act creates a mechanism to protect the rights of assured lifetime tenants whose tenancy was granted before 1 April 2012. If they wish to exchange with a fixed term tenant, then each tenancy is surrendered and a new Assured Tenancy is granted to the pre 2012 tenant.

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<sup>1</sup> Legislation.gov.uk, *Housing Act 1985*, <https://www.legislation.gov.uk/ukpga/1985/68/contents>, accessed April 2024. An Act to consolidate previous Housing Acts.

<sup>2</sup> Legislation.gov.uk, *Localism Act 2011*, <https://www.legislation.gov.uk/ukpga/2011/20/contents>, accessed April 2024. The Localism Act contains a wide range of measures to devolve more powers to councils and neighbourhoods and give local communities greater control over local decisions like housing and planning.

3.3 It is a requirement of the Regulator of Social Housing (RSH) that all registered social housing providers have a policy for mutual exchanges. Their expectations are outlined in the Tenancy Standard section of the regulatory standards.<sup>3</sup> The key points are as listed below:

(Expectation 2.1.2) Registered providers shall develop and deliver services to address under-occupation and overcrowding in their homes. These services focus on the needs of their tenants.

(Standard 1.4) Registered providers must support relevant tenants living in eligible housing to mutually exchange their homes.

- Registered providers shall subscribe to an internet based mutual exchange service (or pay the subscriptions of individual tenants who wish to exchange), allowing a tenant to easily access details of all (or the greatest practicable number of) available matches without payment of a fee.
- Registered providers shall take reasonable steps to publicise the availability of any mutual exchange service(s) to which it subscribes to relevant tenants.
- Registered providers shall provide reasonable support in using the service to tenants who might otherwise be unable to use it.
- Registered providers must offer tenants seeking to mutually exchange information about the implications for tenure, rent and service charges.

## 4. Policy

4.1 We will promote mutual exchanges as a viable housing option to tenants.

4.2 All tenants that have a Secure or Fixed Term tenancy have the right to a mutual exchange, unless they are on a starter tenancy or a demoted tenancy.

4.3 Starter tenants may register an interest for a mutual exchange but will generally not be allowed to carry out the exchange until their tenancy has been converted.

4.4 To support tenants to seek a mutual exchange with another social tenant, we will subscribe to Home Swapper or an equivalent service or will pay the subscription of individual tenants who wish to exchange.

4.5 Reasonable support will be provided to tenants who are not able to access the online exchange service, by providing access at our office premises or a mutually convenient location where there is internet access and a suitable device available. Support may include access to a device with internet access, assistance to set up login details, setting up an advert and finding matches. Monthly paper exchange registers will also be available at our office premises.

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<sup>3</sup> Regulator of Social Housing, Regulatory Standards: Tenancy Standards (April 2024 update) <https://www.gov.uk/government/publications/tenancy-standard>, accessed April 2024.

- 4.6 We aim to inform a tenant on our decision, which will be an approval, conditional consent or a refusal, within 42 days of the receipt of an application from all parties involved.
- 4.7 On receipt of an application for an exchange, our staff will carry out the following checks:
- A property inspection to identify any repairs or alterations that are our responsibility or the responsibility of the tenant.
  - Any necessary health and safety checks on the property.
  - A check to make sure there are no breaches to the tenancy agreement of either party.
  - A tenancy reference will be sought where either party is the tenant of another social landlord.
- 4.8 Advice and information will be provided to our tenant that will include but may not be limited to:
- The tenancy type they will be signing to.
  - An overview of tenant and landlord responsibilities for alterations and repairs.
  - The known condition of the property they are taking on (taking into account the limitations of inspections to a furnished and occupied home) and what liabilities they may be taking on (including any housing debts, alterations and repair responsibilities, for example).
- 4.9 An exchange will normally be approved unless the tenant or proposed exchange partner:
- are on a starter tenancy,
  - are behind with rent,
  - have had a court order made against them for breach of tenancy, or are under a notice of seeking possession of their home,
  - have damaged their home and we need to make repairs to put this right first,
  - or
  - either home has been designed or significantly adapted for people with special needs and the incoming tenant does not have the relevant needs,
  - either property is classified for older people, and the exchanging tenant does not meet the age criterion,
  - either property would be too big or too small for the number of people involved.

All the reasons we may refuse consent are set out in the Housing Act 1985 and the Localism Act 2011 and are summarised at **Appendix 1**.

- 4.10 All exchanges will be effected by a signed and witnessed Deed of Assignment
- 4.11 A move date will generally be agreed within 14 days of approval, to allow time for safety checks including for gas and electrics. Wherever possible, these will

be arranged on the date of the move, and no later than 7 days following the exchange.

- 4.12 An exchange request will be cancelled where a completed application form has not been received from all parties within 14 days of the original request.
- 4.13 If an exchange takes place without consent being granted or before the agreed exchange date, it is unauthorised. In these instances, each tenant will remain liable for their original tenancy and may have lost security by not occupying their home. We will review the circumstances on a case-by-case basis to consider:
- making the exchange legal by completing the new Tenancy Agreements or Deed of Assignment, and Licence to Assign forms retrospectively; or
  - terminate the tenancies by serving a Notice To Quit (NTQ) and without prejudice Notice of Seeking Possession (NOSP) on the original homes to seek possession of the properties.; or
  - Demand that both tenants return to their original homes.

When making our decision we will consider whether the exchange meets the relevant criteria and would otherwise have been agreed.

- 4.14 We will ensure that our staff are appropriately trained so that they can advise customers and manage exchange requests efficiently.

## 5. Appeals

- 5.1 Our tenants have a right to appeal where a mutual exchange is refused, or where they believe unreasonable conditions have been set, through our Complaints policy and procedures.
- 5.2 Appeals should be submitted within 28 days of the refusal.

## 6. Monitoring and Review

- 6.1 Case numbers and outcomes will be subject to regular monitoring and review to ensure compliance with regulatory Consumer Standards, and to ensure that lessons are learned and acted upon timeously.
- 6.2 Key performance indicators will be reported to our Governing Body and to the Regulator of Social Housing as appropriate, and at least annually. Indicators will include but may not be limited to those required under the Tenant Satisfaction Measures published by the Regulator.<sup>4</sup>

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<sup>4</sup>Regulator of Social Housing, *Regulatory Standards for Landlords*, <https://www.gov.uk/government/collections/transparency-influence-and-accountability-including-tenant-satisfaction-measures>, accessed April 2024.

- 6.2 We will review this policy, procedures and any staff training requirement at least every five years to ensure that it continues to operate within best practice, achieve measurable results and to achieve continuous service improvement.
- 6.3 The policy and all associated procedures will alternatively be reviewed immediately following any change to government policy, regulation or legislation, or as operational issues require.

## Appendix 1

The following table provides details of the Legislative reasons for a refusal for a mutual exchange:

<b>Schedule 3 of the Housing Act 1985</b>	<b>Schedule 14 of the Localism Act 2011</b>	<b>Grounds for refusing consent to the exchange</b>
-	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	A court order for possession or a suspended possession order has been made for either property.
Ground 2	Ground 4 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 5	Ground 9	The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation, or the governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity.



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Additional Ground (Housing Act 2004)	Ground 6	An injunction order under section 153 of the Housing Act 1996 or an anti-social behaviour order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.
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Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the assignment went ahead a physically disabled person would not be living there.
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Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil these criteria.
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Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special needs, and if the assignment was to go ahead no person with those special needs would be living there.
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Ground 10	Ground 14	The dwelling is the subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association, and also that the proposed assignee is not such a member nor is willing to become one.
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