



MUTUAL EXCHANGE POLICY



1. INTRODUCTION

A mutual exchange is when two or more tenants agree to 'swap' properties with each other, and in doing so, pass on their legal interest in the tenancy. When a mutual exchange takes place, each party involved takes on the original terms of the tenancy agreement of the person they have swapped with. An exchange can take place with the landlord's permission and between any tenant of a Local Authority or Registered Provider.

2 POLICY STATEMENT

The Association recognises that promoting Mutual Exchanges encourages tenant mobility and creates sustainable communities through best use of its housing stock. It is the Associations policy is to encourage exchanges as an effective means of increasing mobility. The Association will assist tenants by:

- 2.1 Advertising exchanges on notice boards at all offices
- 2.2 Liaising with Local Authorities and other Registered Providers on behalf of tenants wishing to exchange
- 2.3 Setting up three-way and other complex exchanges where appropriate

Legislative and Statutory Framework

- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Local Government and Housing Act 1989
- Disability Discrimination Act 1995 and 2005
- Tenant Services Authority Regulatory Standards (Formerly the Regulatory Code of the Housing Corporation)

3 IMPLEMENTATION

- 3.1 Mutual Exchanges by way of assignment take place when two tenants wish to exchange their homes. There is no new tenancy created and each tenant takes on their exchange partner's tenancy. The right to effect a mutual exchange by way of assignment is given to public sector secure tenants by section 92 of the Housing Act 1985 and has been given to the Associations assured tenants by way of a contractual right in their tenancy agreement.

For procedural purposes assured tenants are dealt with on exactly the same basis as secure tenants and are subject to the same restrictions and conditions.

- 3.2 Legally the Association must either refuse or approve a mutual exchange, in writing, within 42 days from receipt of a fully completed application form. The 42-day deadline relates to the Associations decision as to whether or not the exchange can proceed and does not mean that the mutual exchange will necessarily be complete within 42 days.



3.3 The consent of both landlords can only be withheld on the grounds set out below, is required before a mutual exchange can take place.

Schedule 3 Housing Act 1985

Ground 1 Where a Court Order has been granted giving possession of the property.

Ground 2 Where a Notice of Seeking Possession has been served on either the tenant or the proposed Assignee on any of the

Ground 3 Where the tenant’s dwelling is substantially larger than is reasonably needed by the person to whom the tenant proposes assigning the tenancy.

(The Secretary of State has called for flexibility in deciding whether to refuse an exchange on these grounds and has indicated that the enjoyment of one spare bedroom should not be regarded as substantial under-occupation. In practice it is unlikely consent would be withheld for this reason).

Ground 4* Where the tenant’s dwelling would be too small for the needs of the person to whom the tenant proposes assigned the tenancy.

Ground 5 Where the dwelling has been let to a tenant who was an employee of the landlord and the dwelling is within the boundaries of an operational building or with a cemetery.

Ground 6 Where the landlord is a registered charity and the exchange would result in the new tenant’s occupation conflicting with the purposes of the charity.

Ground 7** Where the dwelling is designed or adapted to suit the needs of a Physically handicapped person and the exchange would result in its being occupied by someone without those needs.

Ground 8 Where the landlord is Housing Association or a Housing Trust which caters for people with special needs and the exchange would result in the dwelling’s being occupied by someone without those needs.

Ground 9 Where the dwelling in a group dwellings let to people with special needs near some facility, and the exchange would result in the dwellings being occupied by someone without those needs.

***Ground 4 Overcrowding**

| Property Type | Household Size |
|---------------|----------------|
| Bedsit | Single person |



| | |
|--------------------|--|
| 1 Bedroom | Single person or Couple |
| 2 Bedrooms | Families with 1 child under 16 |
| | Families with 2 children of opposite sex aged under 7 |
| | Families with children of the same sex aged under 10 |
| 3 Bedrooms | Families with 2 children where one is aged over 10 years |
| | Families with 3 children |
| 4 Bedrooms or more | Families with 3 or more children |

The table is based upon the following principles, which will guide officers in making decisions to allow exchanges to take place:

- Adults sharing accommodation, but not living as a couple, should have different bedrooms.
- Children of the same sex may share a bedroom until the age of 10
- Children of differing sexes may share a bedroom until the age of 7
- No more than two children may share a bedroom, regardless of age

****Ground 7 Adaptations**

If a tenant's current property has been adapted because either they or a member of their household has a disability or particular needs the Association can only allow the exchange to go ahead if the person they intend to swap with needs the adaptations and can provide evidence of this from an occupational therapist or GP.

Conditional Consent

If the tenant is in breach of the tenancy agreement consent to an exchange may be given conditionally. The most likely breaches to the agreement are that there are rent arrears, or there has been damage to the property, and consent can be given conditionally upon e.g. arrears being cleared or the property being repaired. If the tenant/s have breached a suspended possession order then they do not have the right to exchange. In these circumstances the case should be discussed with the Tenancy Management Co-ordinator.

Property Condition/Pre Assignment Inspection

The Association prior to approving any mutual exchange will carry out a pre-assignment or property condition inspection on the property. The following issues would have to be remedied



to the satisfaction of the Association before it will allow an exchange to take place:

- Any works carried out by the tenant that constitute a breach of tenancy
- Any works carried out by the tenant that are illegal
- Any works carried out by the tenant that might pose a significant or serious risk to the health and safety of anyone in or around the property.
- Any serious acts of negligence or damage to the property that would be the tenant's responsibility to repair under their tenancy agreement

Assured Shorthold Tenants Rights

The Housing Act 1996 (section 143K) provides that Assured short hold tenants do not have a statutory or a contractual right to exchange this includes Starter Tenancies and Demoted Tenancies. The Association will therefore not approve exchanges from such tenants

Appeals/Complaints Process

Applicants who feel that they have not been treated unfairly and not in accordance with this policy may have their complaint dealt with through the Association complaints policy and procedure. Complaints may not be made based purely on disagreement with the mutual exchange policy itself.

Changes in tenancy status through mutual exchanges

| Status before exchange | | Status 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 |

4. RESPONSIBILITY

- 4.1 Overall responsibility for the implementation of this policy lies with the Operations Director.
- 4.2 The Tenancy Management Co-ordinator is responsible for the day-to-day management and implementation of the Mutual Exchange policy, for the application of the policy and procedures, monitoring and reviewing performance, managing any related budget, and making recommendations for improvement.
- 4.3 Tenancy Management Officers have a responsibility for the delivery of the Mutual Exchange Policy.

5. CONSULTATION



5.1 The Association will consult on a 3 yearly basis with staff, outside agencies and benchmarking groups to promote continuous improvement and develop good practice in this policy

5.2 Prior to making any changes to this policy the Association will consent and consider the view of:

- All relevant staff
- Senior Management Team
- The Tenants' Forum
- Board of Management
- Residents, Tenants Groups, individual interested tenants
- All relevant outside agencies

6. REVIEW

6.1 The Association will formally review its Mutual Exchange Policy on a 3 yearly basis, unless changes in legislation or regulation require an earlier review.

6.2 Findings and recommendations will be presented to the Association's Board of Management after the views of the Forum have been considered. A review team will carry out each review.

6.3 Progress reports will be made to the Board of Management and Forum, to enable monitoring against strategic aims and objectives and agreed performance indicators. Performance data will be included in the annual report to tenants

7. TRAINING

7.1 The Association will provide all staff responsible for implementing this policy with comprehensive training

7.2 Training will be given to:

- New staff
- Existing staff on a regular basis as a refresher/update as required
- All relevant staff after any changes to policy/legislation
- To relevant outside agencies

8. ASSOCIATED DOCUMENTS

8.1 The Association has the following relevant documents

- Variation of Tenancy Policy



- Rent Arrears Policy
- Repairs Policy
- Allocations Policy
- Supported Housing Policy
- Adaptations Policy
- Starter Tenancy Policy
- Complaints Policy

9. POLICY REVIEW SUMMARY

| | |
|---------------------|------------------------|
| Policy Title | Mutual Exchange Policy |
| Dated Created | April 2007 |
| Person Responsible | Operations Director |
| Version | 3 |
| Date last amended | September 2010 |
| Authorised by | Board of Management |
| Review Period | 3 Years |
| Review Committee | Board of Management |
| Date of last review | September 2010 |
| Date of next review | September 2013 |