

## Mutual Exchange Policy



<b>Reference:</b>	HS POL HOU MEX 1.0	<b>Author:</b>	Sinead Mooney
<b>Scope:</b>	Housing Solutions	<b>Approved by:</b>	ET
<b>Legislation:</b>	Localism Act 2011 Housing Act 1985 & amended 2004	<b>Date of approval:</b>	18/09/18
<b>Regulatory/ Governance:</b>	HCA Tenancy Standard	<b>Date of next review:</b>	September 2021
<b>Related Policies:</b>	Succession & Assignment Policy Tenancy Policy 2017		

### 1. Policy Statement

- 1.1. This policy sets out Housing Solutions' (HS) approach to assisting customers who wish to carry out a mutual exchange. HS is keen to promote mutual exchange as a way of encouraging and promoting customer mobility and is seen as an important means for many customers to be able to find a home more suitable for their needs.
- 1.2. HS supports customers in their search for suitable exchange partners and to facilitate a speedy and smooth exchange of properties where authorised.
- 1.3. The aims of this policy are to ensure that:
  - customers are aware of their responsibilities in finding and inspecting a mutual exchange property;
  - customers are aware of HS's responsibility to provide assistance and support to customers who are seeking a mutual exchange.
  - mutual exchanges are only carried out with the written consent of both landlords and in accordance with legislation (see section 4.0 of this policy).

### 2. Scope

- 2.1 This policy covers HS's social housing customers, including affordable rent, supported, extra care and sheltered housing tenants. This policy does not cover freeholders, leaseholders or shared owners, or market rent customers.

### 3. Definitions

- 3.1 Mutual exchange is the term used when two (or more) parties decide to exchange tenancies. Both/all exchange partners must have the written consent of their landlord to exchange. Another term used for this is home swap.
- 3.2 NTQ – Notice to Quit

#### **4. Legislation**

- 4.1 Provision in the Localism Act 2011 covers circumstances in which at least one of the tenants wishing to transfer has a secure or assured tenancy which began before 1 April, 2012 and at least one of the parties has a flexible tenancy or a fixed-term assured short-hold tenancy.
- 4.2 From April 2012 the new regulatory framework requires registered providers to produce transparent documents which clearly state how they let their homes. These documents must demonstrate a commitment to corporate and local authority partners, strategic housing functions and sustainable communities. The Tenancy Standard requires registered providers to enable their tenants to gain access to opportunities to mutually-exchange by way of internet-based mutual exchange services.
- 4.3 Mutual exchanges between tenants of social landlords usually take place via a deed of assignment but in certain circumstances the old tenancies must be terminated and new ones granted.

#### **5. Housing Solutions' Role**

- 5.1. HS will provide assistance and support to tenants wishing to participate in a mutual exchange. However, the tenant will always be responsible for finding the exchange partner and viewing the property to which they wish to move.
- 5.2. Both exchange partners agree to accept the condition of the property as seen when they carry out a mutual exchange. HS retains responsible for all landlord obligations but tenant responsibilities, such as internal decoration, must be accepted by the incoming exchange partner.
- 5.3. Before a HS customer can exchange properties a surveyor will visit their home to carry out an inspection. If there are repairs or removals of works, the customer will be responsible for arranging these to be satisfactorily completed before the exchange can go ahead.
- 5.4. Customers are encouraged to consider participation in a mutual exchange carefully as they will be accepting the property to which they wish to move 'as seen'. HS will not carry out additional works to bring the property up to its usual lettable standard if the new property falls short of this. Outgoing customers may be subject to recharges in the event that the exchange goes ahead
- 5.5. Both exchange partners must have the written consent of their landlord to carry out an exchange. Where consent is given the mutual exchange will take place through assignment or in certain circumstances by both tenants surrendering their existing tenancies followed by the granting of new tenancies (see appendix B for the situations when this will occur).
- 5.6. HS will facilitate a mutual exchange by:
  - informing tenants of their right to exchange;

- encouraging mutual exchange in addition to or as an alternative to a transfer;
- facilitating access for customers to an online mutual exchange register;
- outlining support to those customers who cannot access the internet.

## **6.0 Grounds for refusal to exchange**

- 6.1 Section 158 & Schedule 14 of the Localism Act 2011 set out the grounds on which a mutual exchange can be refused if one of the tenants is a secure or assured non-short-hold tenant whose tenancy started before 1 April, 2012 and that tenant wishes to exchange with a tenant on a flexible tenancy or fixed term assured short-hold tenancy of 2+ years.
- 6.2 These grounds are broadly the same as those set out in Schedule 3 of the Housing Act 1985 which applies to exchanges involving secure tenants. Appendix A of this policy shows what grounds apply within both of these Acts.
- 6.3 Where both (or all) of the tenants involved in an exchange are on assured non-short-hold periodic tenancies, or if all tenants are on fixed term ASTs, then neither section 158/Schedule 14 of the Localism Act nor Schedule 3 of the Housing Act 1985 applies.
- 6.4 In these cases the circumstances in which the landlord can refuse an exchange will be governed by what the tenancy agreement says about assignment and what the landlord's policies and procedures say about refusal.
- 6.5 Although there is no statutory list of grounds for refusal in assured tenancy mutual exchanges, HS will not reasonably withhold consent and will apply very similar grounds to schedule 43 of the Housing Act 1985 for refusing an exchange. However there may be additional reasons why HS would want or need to refuse an assured exchange. Grounds for refusal include but are not limited to the following:
- the incoming customer is unable to afford the property (for example, following a financial assessment);
  - the property has been identified for disposal after the current tenancy has ended;
  - the property is unsuitable for the proposed incoming customer for a reason other than those covered in Schedule 3 of the Housing Act 1985;
  - HS has information, based on evidence, about the incoming customer or a member of their household causing anti-social behaviour or being involved in unlawful activity or other significant breach of tenancy but where no court order or notice of seeking possession has been issued;
  - HS has previously had to evict or obtain an injunction or anti-social behaviour order against the proposed incoming customer or a member of their household;
  - the incoming customer will over occupy the property by one bedroom or more
  - the incoming customer would under occupy the property by one or more bedroom (also known as 'plus one').
- 6.5.1 Where the property has been adapted, HS will require the incoming customer to provide a report from an occupational therapist to confirm that they require the adaptations;
- 6.5.2 Where the incoming customer has pets, permission must be sought prior to the exchange going ahead
- 6.6 The incoming tenant will be asked to declare whether they own or have any interest in another property (besides the property from which they are swapping). This declaration must be in writing and signed.

6.7 Many of HS older assured tenancy agreements say that we will only refuse exchanges on the same grounds as set out in Schedule 3 of the Housing Act 1985. Please see appendix A for more information.

6.8 In situations involving a secure tenant and in situations covered by Section 158 of the Localism Act HS must notify the proposed exchange partners of their decision on a proposed exchange within 42 days of taking receipt of the request. If the decision is to reject an application for an exchange, HS must state the reason for withholding consent. If HS fails to respond within 42 days consent cannot be withheld.

## **7.0 Requirements before an exchange**

7.1 HS can impose the following conditions before giving consent requiring the customer to:

- comply with any outstanding obligation of the tenancy and,
- pay any outstanding rent, rents repairs charges and/or service charge.

7.2 These conditions have to be met before an exchange may proceed but they do not constitute grounds for refusing consent.

7.3 Except in limited circumstances involving some local authorities and/or social landlords fixed-term tenancies on new tenancies are granted in a mutual exchange. This exchange is created via a deed of assignment. See tenancy types (Section 7.8) for further details.

7.4 Customers will be advised at an early stage in the process to seek independent legal advice so they are aware of any loss of rights or other implications resulting from a change in their tenancy status.

7.5 HS will carry out a gas safety check and an electrical safety check before the exchange completes to ensure that the property is in a good state of repair. Safety certificates will be provided to new residents for their own information and a copy held on the in-house asset management system. If works are required, the mutual exchange will be delayed until the works have been completed and the gas safety and electrical safety certificates have been issued. If the outgoing tenant does not give access for such inspections, as they are required to do under their tenancy agreement, the exchange will be delayed until the tenant complies.

## **7.6 Exchanges without consent**

7.6.1 If a tenant does not obtain HS written consent or if the application to exchange has been withheld or rejected but the tenants still sign a Deed of Assignment and move properties then the exchange will be a breach of tenancy for which the landlord can seek possession. If no deed of assignment has been signed then no transfer of tenancies has taken place even if the tenants physically swap properties.

7.7 In these instances the available options to HS will depend on the individual circumstances but may include:

- considering making the exchange 'legal' by completing new tenancy agreements or deeds of assignment and licence to assign forms retrospectively;
- demanding that both tenants return to their original homes; or
- serving a NOSP or NTQ (depending on whether a deed of assignment has been signed or not) and seek possession.

## 7.8 Tenancy types

7.8.1 Tenants whose secure or assured tenancy predates 1 April, 2012 will retain similar security of tenure to that of their original tenancy and the exchange will take place by the surrender of the old tenancies and grant of new ones. These provisions do **not** apply where an existing secure or assured tenant chooses to exchange with: -

- someone with a fixed-term tenancy of less than 2 years;
- someone with a periodic assured short-hold tenancy;
- someone with a tenancy at an affordable rent.

7.8.2 In all other cases when a mutual exchange takes places the exchange partners 'swap' their tenancies by deed of assignment. This means that the type of tenancy the original tenants had may change. Appendix B of this policy details the tenancy type before and after the mutual exchange.

7.8.3 In options 2 and 3 in the Tenancy Status table (Appendix B) HS will offer the incoming tenant a five-year fixed-term tenancy.

## 8.0 Other Information

### 8.1 Appeals process

8.1.1 Applicants may make an appeal should their application for a mutual exchange be denied. Additional information should be provided in support of their appeal and this will then be considered by the Head of Operations.

8.1.2 Appeals should be received in writing within ten working days of the original decision being communicated to the customer. The Head of Operations will investigate the reasons of the refusal and will advise the applicant in writing of their decision. This process will be concluded within ten working days.

8.1.3 If the customer disputes the decision there is a second right of appeal to the Operations Director. This must be made within ten working days of the outcome of the initial appeal being communicated to the customer and will outline the reason for this further appeal. The Operations Director will give a written response based on a review of the initial decision within ten working days. The decision of the Operations Director will be final.

8.1.4 This appeal process does not interfere with the individual's right to make a complaint to the Housing Ombudsman.

### 8.2 Mutual exchange and succession

The right to succession is personal to the individual tenant and this right transfers with the tenant when they move in a mutual exchange. No new succession rights are created as a result of a mutual exchange and if the incoming tenant has previously succeeded to a tenancy no further successions would be permitted under the tenancy accepted with Housing Solutions

## 9.0 Equality & Diversity

9.1 HS recognises the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. HS works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. HS will record, analyse and monitor information on ethnicity, vulnerability and disability.

## **10.0 Confidentiality**

10.1 Under the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

10.2 HS employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

## **11.0 Review**

11.1 This policy will be reviewed on a three-yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant Housing Solutions' policy.

11.2 Our performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to our Senior Management Team, Executive Team, Board and associated committees.

## **12.0 Appendices**

A Table – Grounds for Refusal to Exchange

B Table - Tenancy Status

## Appendix A – Grounds for Refusal to Exchange

Section 158 of the Localism Act 2011 sets out the grounds under which a mutual exchange can be refused. These are broadly the same as those set out in Schedule 3 of the Housing Act 1985. This appendix to the Mutual Exchange Policy shows what grounds apply under both of these Acts.

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the exchange
-	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	Grounds 4 and 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 for 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.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person and, if the assignment was approved a physically disabled person would not be living there.
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 this criteria.
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 approved no person with those special needs would be living there.

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to the exchange
Ground 10	Ground 14	The dwelling is the subject of a management agreement whereby 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 where the proposed assignee is not such a member nor is willing to become one.
Additional ground (Housing Act 1985)	Ground 6	One of the following in junction orders (under section 153 of the Housing Act) is in force either against the tenant and/or the proposed person who resides with them: <ul style="list-style-type: none"> <li>• anti-social behaviour order</li> <li>• a demotion order</li> <li>• an order under ground 2 for secure tenancies</li> <li>• an order under ground 14 for assured tenancies.</li> </ul>

**Definitions:**

Substantially larger and reasonable: refer to section 6.5

the incoming customer would under occupy the property by one or more bedroom (also known as 'plus one').

Substantially adapted refer to section 6.5.1



## Appendix B

### Deed of assignment or surrender and re-grant

- Tenants whose secure or assured tenancy predated 1 April 2012 will retain similar security of tenure to that of their original tenancy.
- These provisions do not apply where an existing secure or assured tenant chooses to exchange with:-
  - Someone with a fixed term tenancy of less than 2 years
  - Someone with a tenancy at an affordable rent.
- When a mutual exchange takes place the exchange partners 'swap' their tenancies.
- This means that the type of tenancy the original tenants had may change as follows:

Status before exchange			Status after exchange		
Option	Household 1	Household 2	Household 1	Household 2	Method of exchange
1	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Assignment
2	Protected lifetime tenancy	Fixed term social tenancy	Protected lifetime tenancy	Fixed term or lifetime tenancy (not protected) at landlord's discretion.	Surrender and re-grant new tenancy
3	Protected lifetime tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy.	Fixed term or lifetime tenancy (not protected) at landlord discretion. Social rent.	Surrender and re-grant new tenancy
4	Fixed term social tenancy	Fixed term social tenancy	Fixed social tenancy with remaining tenancy length of household 2.	Fixed term social tenancy with remaining tenancy length of household 1.	Assignment
5	Fixed term social tenancy	Fixed term affordable tenancy	Fixed term affordable rent tenancy with	Fixed term social tenancy	Assignment

			remaining tenancy length from household 2.	with remaining tenancy length from household 1.	
6	Fixed term affordable tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy with remaining tenancy length from household 2.	Fixed term affordable tenancy with remaining tenancy length from 1.	Assignment

In options 2 and 3 in the table above, Housing Solutions can offer the incoming tenant a 5-year fixed term tenancy.[policy decision]