

Mutual Exchange Policy

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1. Introduction

Mutual exchange provides social and affordable housing customers with a solution to finding their ideal home.

Local authorities often have strict criteria to join the housing register and customers can face lengthy waiting times. Mutual exchange offers the flexibility for customers to broaden their options to where they can live and the accommodation type available to them.

Eastleigh Borough Council, Affordable Housing Service (the Council) therefore want to encourage our customers to consider this option to move and will provide the necessary information, support and advice to ensure that they can do this easily and successfully.

2. Aim of policy

This policy outlines how the Council support and encourage our customers to exchange or swap their home with another social housing tenant where the tenancy agreement allows. The Council will provide free access to the national mutual exchange service, Home Swapper, to enable this.

3. Scope of Policy

This policy aims to:

- provide clear information on the requirements for a mutual exchange
- outline which tenancy agreements have the right to exchange
- ensure customers understand the process and the consequences of moving
- set out clear guidance on the legal requirements
- set out the grounds for refusing an exchange
- provide a clear appeals process.

All staff within the ??????????/ teams need to be aware of this policy

4. Requesting to exchange a property

4.1 Suitable exchange partners

Customers who are eligible to exchange can do so with the following:

- another eligible Council tenant
- a tenant of another registered non-profit social housing provider (housing association)
- a tenant of a local authority or Arms-Length Management Organisation (ALMO).

4.2 Right to Exchange

The law on mutual exchange is complex and a customers' right to exchange varies depending on the type of tenancy agreement they have:

1. Secure tenancies

Secure customers have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985. On occasions secure tenants who were granted a tenancy before 1st April 2012 will retain their general security of tenure by a surrender of their old tenancy and regrant of a new tenancy when swapping with certain fixed term tenancies.

2. Assured (non-shorthold) tenancies

Assured customers have no statutory right to exchange but usually have the right to assign by way of exchange as a contractual right. Assured tenancies with a probationary period can exchange once the probationary period is satisfactorily completed. On occasions assured tenants who were granted a tenancy before 1st April 2012 will retain their general security of tenure by a surrender of their old tenancy and regrant of a new tenancy when swapping with certain fixed term tenancies.

3. Protected Assured tenancies

Protected Assured customers have the right to assign their tenancy by way of exchange as outlined in their tenancy agreement and the transfer agreement. On occasions assured tenants who were granted a tenancy before 1st April 2012 will retain their general security of tenure by a surrender of their old tenancy and regrant of a new tenancy when swapping with certain fixed term tenancies.

4. Fixed term tenancies

Fixed term customers have the right to exchange as long as any probationary period has been successfully completed. This may be by assignment or by surrender and regrant depending on the type of tenancy of their exchange partner/s.

The following Customers do not have any right to exchange:

- Customers in a probationary period including any extension period – they can exchange once the probationary period has been successfully completed
- Assured Shorthold Tenancies (periodic) – this will include customers in **our** market rented and shared ownership homes
- Non assured/contractual tenancies
- Temporary (decant) tenancies
- Licensees
- Leaseholders
- Shared owners

4.3 Localism Act Exchanges – protection for ‘lifetime’ tenants

Mutual exchange is usually by way of each customer assigning their tenancy to the other so that each effectively takes over the others tenancy, including its status and its rent.

However, Section 158 of the Localism Act 2011 provides protection for ‘lifetime’ tenants, i.e., Assured (non-shorthold) and Secure tenants, that held their tenancy before 1 April 2012, who want to exchange with customers with an assured shorthold fixed term tenancy at social rent. It does this by each customer surrendering their tenancy and the landlord granting a new tenancy.

TRANSPARENCY

This is so the existing lifetime tenant will still have a ‘lifetime’ tenancy following the exchange. In these circumstances the Council will offer both customers a fixed term tenancy.

The Council reserve the right to allocate new fixed term tenancies rather than complete the assignment if it is felt appropriate to do so. This provides more, not less rights to the customer so is not considered to be detrimental.

The table at appendix 2 details the legal entitlement for the exchange of tenancies.

4.4 Grounds (reasons) for Refusal

The Council will not unreasonably withhold permission to exchange. There are three different sets of grounds for refusing a mutual exchange (MEX) application. Which set applies depends on the tenancy type and whether the potential exchange is a Localism Act exchange, but will be one of:

- Schedule 3 of the 1985 Housing Act
- Schedule 14 of the Localism Act 2011.
- The Council policy grounds (Appendix 5)

The list of grounds for refusal under each category can be found in the appendices to this policy.

4.5 Approval of Application

The customer must be advised in writing of a decision within 42 days of requesting a mutual exchange otherwise the Council cannot rely on the statutory grounds for refusal. The 42 days will commence when all applications for the exchange are received. The decision can be to:

1. refuse the exchange
2. approve the exchange, or
3. approve the exchange with conditions

Examples of conditions could be to complete repairs or pay outstanding monies owed.

For an exchange to be approved the customer must have allowed access for any necessary safety inspections including electrical and gas safety checks and Energy Performance Certificate. Failure to allow access will result in the exchange being refused.

If the Council fail to provide the customer with a written decision within 42 days, the customer cannot assume consent has been given and must not proceed with the exchange but should raise a formal complaint about our failure to make a decision.

Where the exchange is with a customer from another landlord, the Council will only give approval once a suitable tenant reference has been received from the other landlord.

The actual exchange date when the customers can move home will need to be agreed by all parties. The Council will normally require a minimum of 10 working days from the exchange being approved to the agreed exchange date. This is to allow time to arrange for contractors to carry out the required safety checks. Safety checks will be undertaken in accordance with

the compliance guidance which means that safety checks must be undertaken on the day of the exchange. If access cannot be obtained the exchange will not go ahead. If the safety checks fail, the Council reserve the right to rearrange the sign up and tenancy start date.

- Customers will be asked to pay rent in advance when the mutual exchange takes place.
- Customers will also need to be able to provide valid ID for all household members over the age of 18.

4.6 Unauthorised Mutual Exchange

In the event of a mutual exchange taking place without our knowledge or written consent or before the agreed exchange date, the Council will treat the occupants as unauthorised occupiers and will advise them to return to their own property within 7 days to avoid a Notice to Quit being served on them both. If they return within the 7 days, their mutual exchange application can continue to be considered.

4.7 Disclosure of Information

In providing a reference to other landlords the Council will disclose all known criminal activity related to the property, any known child protection issues and all complaints of ASB and tenancy breaches that have occurred in the last two years or such longer period as the other landlord requires. This will relate to the tenants – joint or sole, all household members and any visitors to the property. Consent to share this information is included within our application form.

4.8 Right to repairs

Incoming tenants have the same right to repair for works that are the landlords' responsibility. Responsibility for any repairs that were the responsibility of the outgoing/former customer will pass to the new/ incoming customer, as they agree to accept the property 'as seen'. Customers will be advised to inspect the property so they are aware what they will be taking responsibility for and to form an agreement with their exchange partner as to what items will be left and what the expectations are. During our compliance inspections the Council will assess any health and safety concerns and if there any issues identified further inspections will be undertaken and the customer alerted.

4.9 Board members and employees

The Council will ensure any properties let to employees, Councillors or those to whom they are closely connected will only take place in accordance with the Code of Conduct and in accordance with schedule one of the Housing Act 1996 to ensure all applications are treated fairly and no favourable consideration given.

5. Appeals

Customers have the right to appeal if they are unhappy with our decision to refuse their application

This will be managed through the Council's appeals process. Our decision at appeal is final and customers may not raise a complaint regarding the decision ion made at appeal.

Customers have the right to complain about other aspects of the mutual exchange process, if

it is within the scope of the complaints policy.

6. Linked Policies and procedures

- Lettings Policy
- Tenancy Policy
- Rent Policy
- Income Management Policy
- Housing Management Policy
- Complaints Policy
- Compensation Policy
- Appeals procedure
- Anti-Social Behaviour Policy
- Data Protection Policy
- Management Moves Procedure
- Standing orders

7. Legislative Requirements

- Housing Acts 1980, 1985, 1988, 1996 & 2004
- Homelessness Act 2002
- Housing Planning Act 1986
- S106 of the Town & Country Planning Act 1990
- Localism Act 2011
- Data Protection Act 2018 and General data Protection Regulations 2016
- Immigration Act 2014

8. Data Protection

The Council are committed to protecting and respecting the privacy of personal data. As a registered Data Controller (Reg. no. Z7118863) it complies with the General Data Protection Regulations 2016 (GDPR).

More information on how the Council collects, uses and keeps your personal information, and how it protects privacy can be found in our [Record of Processing Activity](#) (ROPA).

The corporate privacy notice provides general information about the council's personal data processing activities overall. As the range of services the council provides is so varied, it has also produced individual [privacy notices for each service area](#), to explain specifically how data will be used within each service.

9. Equality & Diversity

9.1 Equality and diversity are of fundamental importance to services provided regardless of a person's protected characteristics under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, religion pregnancy and maternity, race, belief, or

sex). All must be treated with respect. The Council treats everyone it houses, serves, and employs, fairly, and encourages others to do the same.

9.2 The Council provides information that is clear, accessible, and in an appropriate format (such as translated into another language, or in large print on request). Where appropriate, Council Officers will assist residents, by, for example, helping to complete paperwork. These policies ensure residents are treated in a fair and efficient manner.

10. Monitoring and Review

11.1 This policy will be reviewed regularly, to incorporate legislative and regulatory amendments and changes, best practice developments, or to address any operational issues with the procedure. Input will be sought from our residents (via the **Residents Committee or similar**) prior to making any substantive changes. This is in line with our Corporate Values and is intended to ensure our policy continues to meet the needs and aspirations of our residents.

11. Document History and Approval

Identity and Version Control

This document is the final approved version and will be a controlled document with an individual assigned to version review/amendment.

References and Appendices

- Appendix 1 - Bedroom entitlement for social and affordable rent
- Appendix 2 – Mutual exchange table
- Appendix 3,4 and 5 - Grounds for refusal

Appendix 1 – Bedroom entitlement for social and affordable rent

The Department of Works and Pensions criteria allows one bedroom (regardless of size) for each of the following:

- Adult couple
- Any other adult (aged 16 or over and including carers)
- Two children of the same sex under the age of 16
- Two children under 10 regardless of sex
- Any other child (other than a child whose main home is elsewhere)
- A disabled child who may be allowed their own bedroom in accordance with the local authority housing benefit criteria.

(Foster and adopted children will be considered as part of the family where confirmation is received)

This table shows the size of property a household will be considered for:

Household circumstances	Studio	1 bed	2 bed	3 bed	4 bed	5 or more bed
Single applicant	✓	✓	✓*			
Couple		✓	✓*			
Two people not in a relationship			✓			
Parent / couple with 1 child or pregnant*			✓			
Parent / couple with 1 child under 10 and pregnant			✓			
Parent / couple with 2 children (eldest under 10 years)			✓			
Parent/couple with 2 children same sex (under the age of 16)			✓	*✓		
Parent / couple with 2 children of different sex (eldest 10 years or over)				✓		
Parent / couple with 2 children and pregnant with 3 rd child*				✓	*✓**	
Parent / couple with 3 children**				✓	**✓	
Parent / couple with 4 or more children**				✓ **	✓ **	✓*

* May be accepted for additional bedroom but must be advised of the under-occupancy charge and how they will be affected if they are claiming benefit now or in the future if their circumstances change. If claiming benefit, they will be responsible for 14% of the rent.

** Dependant on age of children – Apply LHA criteria

Separated parents who share the care of their children and who may have been allocated an extra bedroom to reflect this, may be affected by the under-occupancy charge. Benefit rules mean that there must be a designated 'main carer' for children (who receives the extra benefit).

Under Occupying

There will be instances where we approve a letting outside of the LHA criteria. This will be at the discretion of the Lettings Manager.

Examples of when we may allow this are:

- a parent/couple with 2 children (same sex) and pregnant with 3rd child – LHA size criteria would consider household eligible for a 2-bedroom property, we may allow them to move in to a 3-bedroom property.
- a parent/couple with two children of the same sex (age 10 and 15) – LHA size criteria would consider household eligible for a 2-bedroom property, we may choose to allow them to move to a 3-bedroom property due to the eldest child soon turning 16 and qualifying for a separate bedroom.
- a property is hard to let.
- When it is to the benefit of the business to move an under-occupying household to smaller accommodation to reduce their level of under-occupancy
- For mutual exchanges, we will allow 1 spare bedroom where there are no financial implications.

In situations like this we must consider our customers' circumstances and how they'll afford their rent if they were to under occupy their home and be eligible for benefits.

We'll ensure any applicant is advised of the under-occupancy charge and how they will be affected prior to offering a home.

Appendix 2

Mutual Exchange table – legal entitlement

1. A= assignment
2. S = surrender and regrant

Note:

It is ONLY if a fully secure/assured pre 01.04.12 tenant exchanges with a tenant who has a social rent flexible tenancy or a social fixed term assured shorthold tenancy that the Localism Act 2011 grounds apply under Schedule 14.

Under The Transfer of Tenancies and Rights to Acquire (Exclusion) Regulations 2012 (SI 2012/696) affordable fixed term tenancies are excluded from the Localism Act and surrender and re-grant.

Further, there is no statutory right under s158 LA to mutually exchange an affordable rent FT AST unless each landlord gives permission. It will never be by surrender and re-grant because of the Exclusion Regs 2012. Fixed term /flexible tenancy must have at least 2 years left in order to exchange

Before Tenant 1	Before Tenant 2	After Tenant 1	After Tenant 2	Process/ Grounds
Assured affordable	Assured/Secure social	Assured/secure of T2 at social rent	Assured/secure of T1 t affordable	A 1985 Act
Assured/secure social	Assured/secure social	Assured secure of T2 at social rent	Assured secure of T1 at social rent	A
Secure/Assured Commenced after 01.04.12	Fixed affordable/social rent	Fixed affordable/social with remaining term of T2's FT	Secure/Assured of T1	A
Secure /Assured commenced before 01.04.12	Fixed affordable rent	Fixed affordable with remaining term of T2's FT	Secure/Assured of T1 at the same rent T1 had	A because it is discretionary
Secure/Assured Commenced before 01.04.12	Fixed social rent	Secure/Assured at social rent	FT or secure/assured at landlord's discretion	S 2011 Act

Appendix 3

Grounds for Refusal of Mutual Exchange by way of assignment under Schedule 3 of the Housing Act 1985:

Ground 1 – Possession Order outstanding

The tenant or the proposed incoming tenant has a current possession order or a suspended possession order.

Ground 2 – Possession proceedings outstanding or NOSP in force

There is a valid notice of seeking possession against the tenant or the proposed incoming tenant under Grounds 1 - 6 of Schedule 2 of the 1985 Act and Ground 84A of 1985 Act (and similar or/and equivalent grounds under Schedule 2 of the Housing Act 1988, namely grounds 7A, 8, 10, 11, 12, 13, 14, 14ZA, 14A, 15,17) or possession proceedings have begun against either party on one or more of those grounds.

Ground 2ZA – Possession proceedings or NOSP in force – absolute ground

There is a valid notice seeking possession against the tenant or proposed incoming tenant on ground 84A or possession proceedings have begun on that ground

Ground 2A – In respect of the tenant, the proposed incoming tenant and/or household member

If any of the following injunctions or orders are in place or pending for the tenant, incoming tenant or household member of either party.

- injunction (e.g., Anti-social behaviour injunction)
- demotion order
- an anti-social behaviour order
- a possession order (included suspended order) granted on the grounds of nuisance conduct

Ground 2B – Closure Notice or Order

If the property is subject to a closure notice or closure order under the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 3 – Under-occupation

The accommodation is substantially more extensive than is reasonably required by the proposed incoming tenant.

Ground 4 - Suitability

The extent of the accommodation is not reasonably suitable for the needs of the incoming tenant and their family.

Ground 5 – Non-housing accommodation or employment

The dwelling forms part of, or is within the curtilage of, a building which is held mainly for non-housing purposes or is situated in a cemetery and was let to the tenant or his predecessor in connection with their employment with the landlord, or with a local authority, a new town corporation, housing action trust, Development Board for Rural Wales, or the governors of a grant-aided school.

Ground 6 – Conflict with charitable aim

The landlord is a charity and the proposed assignee's occupation would conflict with the objects of the charity.

Ground 7 – Accommodation designed for the disabled

The property is designed to make it suitable for a physically disabled person and if the exchange took place, no such person would be living in the property.

Ground 8 – Landlord is a specialist housing provider

The landlord is a housing association or housing trust which provides accommodation only for persons whose circumstances, (other than merely financial circumstances), make it especially difficult for them to satisfy their housing needs and if the exchange took place there would be no such person living in the dwelling.

Ground 9 – Properties designated for special needs e.g., sheltered or supported housing

The property is let to persons with special needs, and a social service or special facility is provided close by in order to assist the tenants - if the exchange took place there would be no person with special needs living in the property.

Ground 10 – Management Agreement

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, at least half the tenants of the dwellings are members of the association, and also that the proposed incoming is not such a member nor is willing to become one.

Appendix 4

Grounds for refusal of a mutual exchange by way of surrender and granting of tenancies under Section 158, Schedule 14 of the Localism Act 2011:

Unless otherwise stated, the grounds for refusal are the same as those under Schedule 3 of the 1985 Act set out in Appendix 1 above.

Ground 1

Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2

An obligation under one of the existing tenancies has been broken or not performed.

Ground 3

Same as Schedule 3, ground 1

Ground 4

same as Schedule 3, ground 2 for Secure tenants

Ground 5

Same as Schedule 3, ground 2 for Assured tenants

Ground 6

Same as Schedule 3, ground 2A

Ground 7

Same as Schedule 3, ground 3

Ground 8

Same as Schedule 3, ground 4

Ground 9

Same as Schedule 3, ground 5, except employment may also be with a development corporation or an urban development corporation.

Ground 10

Same as Schedule 3, ground 6

Ground 11

Same as Schedule 3, ground 7

Ground 12

Same as Schedule 3, ground 8

Ground 13

Same as Schedule 3, ground 9

Ground 14

Same as Schedule 3, ground 10

Appendix 5

Council refusal reasons: specified grounds and conditions

The following grounds for refusal and conditions apply to any mutual exchange where neither Schedule 3 of the Housing Act 1985 nor Schedule 14 of the Localism Act 2011 are referred to in the tenancy agreements:

- a) If there are breaches of tenancy these must be remedied before the exchange is approved. E.g., outstanding arrears.
- b) Where the property is too large for the incoming tenant and will result in under occupation – we will allow one spare bedroom
- c) Where the property is too small for the incoming tenant and will result in overcrowding – see bedroom calculator at appendix 4
- d) The incoming tenant's landlord has not provided a satisfactory reference.
- e) The tenant or their household have known tenancy breaches or criminal activity which upon investigation with the appropriate agencies deem the exchange unsuitable
- f) Where any conditions of planning agreements, covenants, head leases, Section 106 agreements that relate to the property would prohibit the incoming tenant from moving to the property, for example where the housing is only to be provided for people with a local connection.
- g) Where the incoming tenant cannot clearly demonstrate that they have a sufficient level of income to afford the rent. (e.g., as a result of either welfare benefit entitlement, or a general lack of income) unless they are an existing tenant, and the rent would be lower than their current rent.
- h) Where repairs are required that are the customers' responsibility, we will agree a deadline with the customer for completing the repairs. If they fail to make the repairs, we can refuse the exchange.
- i) If a property has significant adaptations and the incoming household does not require such a property e.g., the property has been purpose built for a disabled person or it has had structural changes or significant adaptations to fixtures and fittings e.g., it has level access or significant external ramping, it has wider doors and hallways for turning in a wheelchair, or it has an adapted kitchen suitable for wheelchair users or a level access shower/wet room. A single adaptation such as a level access shower may not prevent an exchange from taking place.
- j) Where money has been exchanged between partners to facilitate the exchange.
- k) Exceptional circumstances where it would not be reasonable to consent to

the exchange (these decisions must be approved by a Head of Service) such as where there are significant safeguarding concerns or members of the public are put at risk.

- l) If a tenant has a preserved right to buy and exchanges with another Council tenant, they may still have the preserved right to buy at their new home. If they exchange with an assured tenant of another housing association, then they will lose the preserved right to buy. If they exchange with a secure council tenant (from another council), then they may have the right to buy at their new home. The exchange partner will not have the right to buy unless they are an existing Council tenant that already has the preserved right to buy.