

Mutual Exchange Policy



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1. Introduction

- 1.1 Town & Country Housing (TCH) promotes mutual exchange to enhance tenant choice, encourage mobility and help create sustainable communities through best use of its housing stock.
- 1.2 Mutual exchange is when two or more tenants who occupy permanent, self-contained accommodation 'swap' homes. This potentially offers a quick and efficient alternative for tenants to find a new home that better suits their needs where they have low priority under local Choice Based Lettings Schemes.
- 1.3 Exchanges may take place between tenants of the same or different Registered Providers (housing associations) and/or of a local authority. This is subject to all parties (including any joint tenants) wishing to exchange and obtaining written approval from their landlord(s).
- 1.4 TCH will assist tenants that wish to exchange. This includes enabling them to gain free access via internet-based 'HomeSwapper' to register an interest in arranging a mutual exchange; enter their current property details and requirements for the property they hope to exchange to; and to obtain details of properties matching those requirements.

2 Scope of the Policy

- 2.1 Most TCH assured and assured shorthold tenants have a contractual right (within their tenancy) to exchange. This is a statutory right for secure tenants.
- 2.2 Tenants that may apply to exchange are:
 - Council tenants with a secure or flexible (fixed term) tenancy
 - Housing association tenants with an assured (non shorthold) or assured shorthold tenancy of 2 years or more, or a secure tenancy.
- 2.3 The following occupiers do not have the right to exchange:
 - Tenants within their probationary period (including any extension) of their tenancy or with a starter tenancy
 - Those with an assured shorthold tenancy of less than two years.
 - Those with demoted tenancies
 - Licensees
 - Shared owners
 - Leaseholders

3. Policy Aims and Objectives

- 3.1 The purpose of this policy is to provide clear and accessible application, decision making and appeals processes, so that mutual exchanges take place lawfully and without undue delay.
- 3.2 This policy also sets out the circumstances for assigning, or surrendering and re-granting a tenancy and the grounds for refusing an exchange.

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3.3 TCH will ensure that before giving consent to exchange, all parties are aware of the impacts of exchange on their tenancy rights including any change in secure or assured status, any change in rent level between social and affordable rent, and any gain or loss of the right to buy, preserved right to buy, or right to acquire.

4. References

- Housing Act 1985 (Schedule 3) – Grounds for refusal ‘lifetime’ tenants
- Localism Act 2011 (Sec. 158 and Schedule 14) – Criteria for surrender and re-grant of tenancies and grounds for refusal.
- Transfer of Tenancies and Right to Acquire (Exclusion) Regulations 2012 – Excludes fixed term tenancies at affordable rent from Section 158 provisions.
- Regulator of Social Housing - Tenancy Standard

5. Legal Process

5.1 Mutual exchanges may take place either by way of assignment or by surrender and re-grant of tenancies. Where assigned, each tenant ‘steps into the others shoes’, taking over their tenancy type and terms.

5.2 Section 158 of the Localism Act 2011 provides that pre 1st April 2012 secure and assured tenants will usually keep their security of tenure on exchange. Where both are pre 1st April 2012 secure or assured tenants, the exchange will be by way of assignment. Where a secure or assured (non shorthold) tenant wishes to exchange with a fixed term tenant, the exchange will be carried out by surrender and re-grant of tenancy. TCH will grant pre-1 April 2012 ‘lifetime’ tenants a new assured (non-short hold) tenancy, unless they choose to exchange with a fixed term affordable rent tenant, in which case they will take over the remainder of the affordable rent tenancy.

5.3 Pre 1st April 2012 tenants that retain the security of tenure of their original tenancy through surrender and re-grant will only be able to do so once as if they ever exchanged again they will fall outside the requirements of s158 in that the tenancy would have commenced after 1 April 2012. Similarly, existing assured or secure tenants who exchanged by assignment with another secure or assured tenant will not enjoy the protection offered by s158 of the Localism Act should they choose to exchange again if the tenancy which is assigned to them commenced after 1st April 2012.

5.4 Where an original party to a joint tenancy is no longer resident and the remaining joint tenant wishes to exchange, TCH will advise them to resolve the issue by completing a ‘Joint to Sole’ assignment of the tenancy before proceeding with the exchange. If the former occupier cannot be contacted to complete the assignment, TCH will allow the remaining tenant to serve a Notice

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to Quit (which must be entirely valid) to formally end the joint tenancy, in which case a new tenancy would be granted to the incoming tenant.

6. Mutual Exchange and the Right-to-Buy

- 6.1 Former tenants of Tunbridge Wells Borough Council who retained a Right-to-Buy will be informed if this will be lost, for example if they exchange outside of TCH stock. An exchanging tenant will not gain a preserved Right-to-Buy if they were not previously entitled to it, but they may have the Right-to-Acquire.

7. Mutual Exchange and Succession

- 7.1 The right to succession is personal to the individual tenant(s) and this transfers with them if they move by mutual exchange. If the incoming tenant has previously succeeded to a tenancy no further successions would be permitted even though it is a different property.

8. Grounds for Refusal

- 8.1 Unlike secure tenancies there is no statutory list of grounds for refusal of assured tenancy mutual exchanges. TCH will generally apply similar grounds as set out in schedule 3 of the Housing Act 1985 (see Appendix 1) a summary of which is set out below:

- A Notice of Seeking Possession has been served or a Possession Order has been granted.
- The property is too big or small for the incoming household.
- If any member of the household has behaved in an anti-social way, and legal action has or is being taken as a result.
- The property has been adapted or has features that make it suitable for a disabled person or has been designated for people with support needs and if the exchange took place there would no longer be such a person living in the property.
- If the property is within sheltered accommodation and the exchange partner does not meet the necessary criteria.
- If the tenancy type prohibits mutual exchange.

- 8.2 TCH will not unreasonably withhold consent to exchange tenancies but may also refuse the assignment of an assured tenancy where this would put the sustainability of the tenancy or the local community is at risk. All applications will be considered on a case by case basis but examples of where approval to exchange may not be given could include, but are not limited to:

- The property is unsuitable for the incoming tenant for reasons other than those covered by the grounds in schedule 3 Housing Act 1985 (see 8.1 above and Appendix 1) e.g. it is intended for a particular client group

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- The incoming tenant or a member of their household has previously been evicted from a TCH property or an injunction or other order has been obtained
- The incoming tenant(s) or a member of their household has previously abandoned a TCH property
- The incoming tenant(s) or a member of their household has caused anti-social behaviour or been involved in criminal activity or another significant breach of tenancy but no Notice of Seeking Possession or Court Order has been issued on that tenant or household member.
- The incoming tenant(s) cannot demonstrate they can afford the property. Affordability is assessed using TCH's standard affordability calculator.
- The incoming tenant or a member of their household has an outstanding debt with TCH or another landlord.
- There is reason to believe that one of the exchange partners does not intend to reside permanently in the exchange property.
- The incoming tenant or a household member owns or holds the tenancy of another property in addition to the one they are exchanging from
- The property has been identified for disposal after the current tenancy has ended

8.3 Where TCH's property has been adapted an Occupational Therapist must confirm the incoming tenant or a household member requires the adaptations.

8.4 Where the incoming tenant has pets, permission must be sought prior to the exchange going ahead.

8.5 A list of the grounds on which exchanges where surrender and re-grant may be refused is set out in Appendix 2.

8.6 TCH will notify all parties if it rejects or agrees the exchange (which may be subject to conditions) within 42 days of the application. The application cannot be refused on the above grounds if TCH has not confirmed this within the 42-day period.

8.7 Conditional terms must relate to a tenancy obligation such as to pay the rent or making good damage caused by neglect, misuse or failing to report a repair. Tenants with rent arrears or who are or otherwise in breach of tenancy but have not been served a Notice of Seeking Possession, will normally need to clear the arrears or remedy the breach. TCH may however allow payment of arrears over a longer period where the tenant has been subject to under occupation penalty and they are moving to smaller accommodation to avoid this deduction from their Housing Benefit or Universal Credit in the future.

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9. Property Condition

- 9.1 Exchanging tenants moving into a TCH property will be advised that at the point of exchange, properties should be to TCH void standard, which is how they will need to be returned when the tenancy comes to an end.
- 9.2 TCH will inspect its property/ properties that the tenant(s) wish to exchange out of within 10 working days of receiving the application. This is to identify any damage caused intentionally or neglectfully, and any other issues that the outgoing tenant must rectify to an acceptable standard before TCH can approve the exchange. TCH will confirm any such issues in writing.
- 9.3 The incoming tenant may choose to accept responsibility for minor items that do not meet TCH's void standard. Any such matters that they will need to address before they vacate will be confirmed in writing.
- 9.4 Exchanging tenants may also agree that, for example carpets and curtains will be left. Any such items to be 'gifted' will be itemised and the incoming tenant will be required to confirm their acceptance in writing. It is the outgoing tenant's responsibility to dispose appropriately any items that their exchange partner does not wish to keep and/or accept responsibility for.
- 9.5 An incoming tenant may not accept responsibility for:
- Significant damage;
 - Sub-standard alterations
 - Unauthorised structural work
 - Electrical work – unless a certificate of compliance has been obtained, in which case the incoming tenant would be responsible for future maintenance;
 - Anything that poses a potential health and safety risk.

In these circumstances the outgoing tenant must fully resolve the issues within an agreed timescale, if they do not a Notice of Intention to Seek Possession may be served which could prevent an exchange from being approved. If they still fail to resolve the issue TCH may undertake essential remedial works in default and recharge the cost to the tenant.

- 9.6 Incoming tenants are informed in writing that at the point of exchange they take the property 'as seen'. This will include becoming responsible for any damage caused during moving or which was not previously evident. They will also be responsible for the removal of any items or rubbish left behind by the outgoing tenant at the property (including in the loft, outbuildings or the garden).
- 9.7 The new tenant will also be responsible for alterations or improvements that the

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outgoing tenant has made where these are to an acceptable standard and may therefore remain. Where, for example, the outgoing tenant has replaced the bath with a shower TCH will not put back a bath following the exchange.

10. Electric, Gas, Solid Fuel and Oil Safety Checks

10.1 TCH will carry out safety checks to electrical and space heating systems prior to approving a mutual exchange. The outgoing tenant will be responsible for allowing access for relevant contractors. Log burning stoves or similar that have been installed without TCH's prior approval will need to be removed at the tenants expense, before an exchange will be approved.

11. Property Size

11.1 TCH will not usually allow an exchange if the incoming household would be considered, under Housing Benefit (HB) / Universal Credit (UC) rules to be under occupying by two or more bedrooms (whether they claim HB/U C or not).

11.2 TCH will allow exchanges where the household will be under occupying by one bedroom but will advise the incoming tenant of the amounts that may be deducted from any HB or UC claim based on current rent. Where the under-occupation penalty is time bound, e.g. until children reach a certain age, TCH will also advise on the time period that the deduction may apply for.

11.3 TCH will not agree an exchange where a property would be overcrowded by reference to type and person size. TCH consider that a bedroom is needed for:

- Each adult couple
- Any other person aged 16 or over (but not lodgers)
- Any two children aged under 10
- Any two children of the same sex aged under 16
- An adult or child needing a separate bedroom because of severe disability or ill health Subject to confirmation in writing by a medical practitioner.
- A resident or non-resident carer where the tenant or a household member needs overnight care (where confirmed by a social care assessment).

11.4 Household members will only be taken into account where the property is to be their principal home. Children that are subject to shared access arrangements will be regarded part of the household where they live at the property for at least 50% of the time.

12. Planning Restrictions and Specialist Supported Housing

12.1 TCH may be unable to approve applications to exchange where planning

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agreements or other restrictions apply. This could include but is not limited to:

- Lettings restricted to people with local connections for example, to a particular village or its surrounding area.
- Minimum age restrictions

12.2 Residents of specialist supported housing do not generally have the right to exchange because of the form of tenancy they hold. Where they do, the prospective incoming tenant's need for the support service will be assessed before any application to exchange is considered further.

13. Information Exchange

13.1 TCH will co-operate fully in any information sharing required to facilitate exchanges, whilst ensuring that all relevant UK data protection requirements are met and that any necessary consents are obtained.

13.2 TCH will request references on tenancy conduct including details of any anti-social behaviour and rent account issues. Approval for exchange will not be given until a satisfactory reference has been received for the incoming tenant.

14. Appeals

14.1 If a tenant is unhappy with any decision made under this Policy they have the right to ask for it to be reviewed. They can do this by sending their reasons in writing within 10 working days of being informed of the decision. A manager who has not previously been involved will review the case and reply to the customer within 10 working days.

15. Policy Review

15.1 This policy will be reviewed at least every three years or earlier to address legislative or Regulatory changes, best practice or operational issues.

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Appendix 1 – Grounds for Withholding Consent to Exchange by Assignment **Schedule 3 Housing Act 1985**

Ground 1 - The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

Ground 2 - Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2ZA - Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83ZA (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.]

Ground 2A

Either—

- (a) a relevant order, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force, or
- (b) an application is pending before any court for a relevant order, a demotion order, an anti-social behaviour possession order or a riot-related possession order to be made,

in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “ **relevant order** ” means -

- an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);
- an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);
- an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);
- an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998;
- an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003 or section 27 of the Police and Justice Act 2006.
- an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014 or an order under section 22 of that Act.

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An **anti-social behaviour possession order** means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

A **demotion order** means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988.

A **riot-related possession order** means an order for possession under Ground 2ZA in Schedule 2 to the Housing Act 1985 or Ground 14ZA in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Ground 2B - The dwelling-house is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.]

Ground 3 - The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4 - The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

Ground 5 - The dwelling-house -

(a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and

(b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of -

- the landlord,
- a local authority,
- a development corporation,
- a housing action trust
- a Mayoral development corporation,
- an urban development corporation, or
- the governors of an aided school.

Ground 6 - The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.

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Ground 7 - The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.

Ground 8 - The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.

Ground 9 - The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

Ground 10 The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

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Appendix 2 - Grounds on which a Landlord may refuse an application to exchange by way of Surrender and Re-grant a Tenancy. The Localism Act 2011 Schedule 14.

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 - Any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

Ground 4 - Either of the following conditions is met.

The first condition is that—

(a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and

(b) possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).

The second condition is that—

(a) a notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and

(b) the notice specifies one or more of those grounds and is still in force.

Ground 5 - Either of the following conditions is met.

The first condition is that—

(a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and

(b) possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)

The second condition is that—

(a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and

(b) the notice specifies one or more of those grounds and is still in force.

Ground 6 - Either of the following conditions is met -

1. A relevant order or suspended Ground 2 or 14 possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant, or.

2. An application is pending before any court for a relevant order, a demotion order

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or a Ground 2 or 14 possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.

In this paragraph, a “relevant order” means—

- a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
- b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
- c) an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),
- d) an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998, or,
- e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003;

a “demotion order” means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988;

a “Ground 2 or 14 possession order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

Ground 7 - The accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8 - The extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of—

- (a) the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (b) the family of that tenant or those tenants.

Ground 9 - The dwelling house proposed to be let on the new tenancy meets both of the following conditions.

That the dwelling-house—

- (a) forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord—
 - (i) is held mainly for purposes other than housing purposes, and
 - (ii) consists mainly of accommodation other than housing accommodation, or
 - (iii) is situated in a cemetery.

And

(b) the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of—

- (a) the landlord under the tenancy,
- (b) a local authority,

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- (c) a development corporation,
- (d) a housing action trust,
- (e) an urban development corporation, or
- (f) the governors of an aided school.

Ground 10 - The landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11 - Both of the following conditions are met:

The first condition is that the dwelling-house proposed to be let on the new tenancy has features that—

- (a) are substantially different from those of ordinary dwelling-houses, and
- (b) are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.

The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12 - Both of the following conditions are met:

1. The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to meet their need for housing.
2. The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13 - All of the following conditions are met.

1. The first condition is that the dwelling-house proposed to be let on the new tenancy is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs.
2. The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.
3. The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14 - All of the following conditions are met.

1. The first condition is that—
 - (a) the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and
 - (b) at least half the members of the association are tenants of dwelling-houses subject to the agreement.
2. The second condition is that at least half the tenants of the dwelling-houses are members of the association.
3. The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.

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References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A(6) of the Housing and Regeneration Act 2008.

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