



# Mutual Exchange Policy

## 1.0 Purpose and scope

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This policy sets out our approach to mutual exchange. It highlights our commitment to providing an enhanced right to exchange our tenancy agreements, to enable our tenants to move home within Notting Hill Genesis stock or more widely between social housing providers. This policy outlines the types of exchanges that we facilitate and our obligation to ensuring that all exchanges are completed promptly and in line with legislation.

## 2.0 Definition

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**Mutual exchange:** refers to the process whereby tenants living in social housing swap homes. The exchange can take place between more than two tenants.

## 3.0 Promoting mutual exchanges

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We encourage tenants to register with services that facilitate mutual exchanges, including internet-based services. We take reasonable steps to publicise the availability of any mutual exchange service. We advise tenants on new platforms for mutual exchange when we become aware of them. We provide reasonable advice to tenants who do not have access to the internet and signpost them to support.

We are aware and understand the (external) barriers that some residents may have to overcome when trying to mutual exchange, such as overcrowding and trying to stay close to family networks and we will provide advice and support where we can.

## 4.0 Eligible tenants

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The following tenants have the right to mutual exchange:

### “Lifetime” tenants

- Secure tenants have a statutory right to exchange
- Assured non-shorthold tenants have a contractual right to exchange

### Fixed term tenants

- Assured shorthold fixed term tenants who have completed the probationary period of their tenancy have a contractual right to exchange.

We consider requests from tenants who have not completed the probationary period of their tenancy on a case-by-case basis. Such cases are only approved if the exchange would happen by way of surrender and re-grant (see 5.2 below).

## **5.0 Types of exchange**

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The type of mutual exchange that takes place varies according to the type of tenancy that the mutual exchange applicant and their exchange partner hold. The exchange will take place either by way of assignment or surrender and re-grant.

### **5.1 By way of assignment**

An assignment is where each tenant passes their tenancy onto their mutual exchange partner. By this process, no new tenancy is created. Assignments take place where:

- Both tenants have lifetime tenancies
- Both tenants have fixed term tenancies. Each tenant takes on the remainder of the fixed term when they are assigned the tenancy.

Secure tenants exchanging with an assured tenant are advised to seek independent legal advice about the loss of any statutory rights as a result of the exchange.

### **5.2 By way of surrender and regrant**

The Localism Act 2011 introduced rights for some tenants to swap homes with each other while retaining their security of tenure. By this process, each tenant surrenders their original tenancy and is granted a new one of the same type. We have extended this right to all tenants who are eligible for a mutual exchange. Where an incoming tenant holds a fixed term tenancy, we issue you them with an assured tenancy, in line with our Tenancy policy.

## **6.0 Grounds for refusal**

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We approve or refuse all mutual exchanges within 42 days of receiving a full application with supporting documents from a Notting Hill Genesis tenant.

The grounds for refusing an exchange vary according to the tenancy types of mutual exchange applicants. Exchanges between lifetime tenants may be refused on grounds listed in Schedule 3 of the Housing Act, while the grounds for refusal for exchanges involving a fixed term tenant are listed in Schedule 14 of the Localism Act. The grounds for refusal can be found in [appendix 1](#).

### **6.1 Property size**

We deem a property as being too large if the incoming tenant would under-occupy the property by more than one bedroom according to the size criteria set out below.

We consider allowing an incoming tenant to move into a property that is deemed too small as long as the move would not result in statutory overcrowding.

We allow for one bedroom for each person (single adult) or couple living as a household and an extra bedroom for:

- Any other person aged 16 years or over
- Two children of the same gender under the age of 16

- Two children who are under the age of 10 regardless of gender
- A child or adult who requires overnight care from a non-resident carer
- A child or adult who is unable to share a bedroom because of disability
- A foster child where the resident is an approved foster carer, whether they have a child placed with them or not (as long as they have been approved or had a placement in the last 12 months).

### **6.2 Conditions for consent**

Where a ground for refusal does not apply, we may withhold consent to an exchange until all obligations under the tenancy have been met, including:

- The property is in a good condition
- All rent and service charge has been paid.

## **7.0 Affordability**

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While we can never refuse an exchange due to concerns around affordability, we ask all applicants are asked to undergo an affordability assessment so they can be sure that the rent is affordable.

We aim to meet the objective that no household should pay more than 40% of their net household income on housing costs (rent including other charges owed to Notting Hill Genesis). We strongly discourage an exchange where the incoming tenant will not be able to afford the property. We emphasise to the tenant the risk they face of losing their tenancy by exchanging into an unaffordable property.

## **8.0 Exchange without consent**

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In circumstances where tenants have swapped properties without our formal consent, both tenants will be in the serious position of:

- Having no legal interest in the tenancy at the property they have moved to
- Being liable for the rent and other obligations of their original tenancy
- Losing their home and security of tenure as they are no longer occupying the property as their main or principle home.

## **9.0 Information sharing**

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Information regarding our residents is sensitive and we maintain confidentiality in line with our data protection policies. However, in order for the exchange to take place, we are required to share information about the applicant's tenancy history with the exchange partner's landlord or staff where both applicants are Notting Hill Genesis tenants. We make applicants aware that information will be shared when they apply to exchange.

## **10.0 Our approach**

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In writing this policy we have carried out assessments to ensure that we are considering equality, diversity & inclusion. To request a copy of the assessment, contact [policy@nhg.org.uk](mailto:policy@nhg.org.uk)

## 11.0 Reference

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- Housing Act 1985
- Localism act 2011

### Document control

Author	Victoria Agyeman-Duah, Policy Officer
Approval date	3.02.2022
Effective date	10.03.2022
Approved by	Policy Group
Policy owner	Regional Head of Housing Head of Voids and Lettings
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### Version Control

Date	Amendment	Version
	New NHG policy	1.0
03.02.2022	Policy review	2.0

## Appendix 1 – Grounds for refusal

Schedule 3 of the Housing Act 1985	Schedule 14 of the Localism Act 2011	Grounds for refusing consent to exchange
-	<i>Ground 1</i>	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-	<i>Ground 2</i>	When an obligation under one of the existing tenancies has been broken or not performed.
<i>Ground 1</i>	<i>Ground 3</i>	A court order for possession or a suspended possession order has been made for either property.
<i>Ground 2</i>	<i>Ground 4 &amp; 5</i>	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
<i>Ground 3</i>	<i>Ground 7</i>	The property is substantially larger than is reasonably needed by the proposed assignee.
<i>Ground 4</i>	<i>Ground 8</i>	The property is not reasonably suitable to the needs of the proposed assignee and their household.
<i>Ground 5</i>	<i>Ground 9</i>	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.
<i>Ground 6</i>	<i>Ground 10</i>	The landlord is a charity and the proposed assignee's occupation of the property would conflict with the objects of the charity.
<i>Ground 7</i>	<i>Ground 11</i>	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.
<i>Ground 8</i>	<i>Ground 12</i>	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil this criteria.
<i>Ground 9</i>	<i>Ground 13</i>	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.
<i>Ground 10</i>	<i>Ground 14</i>	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.
<i>Additional ground (Housing Act 2004)</i>	<i>Ground 6</i>	An injunction order under Section 153 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.