



Mutual Exchange Policy and Procedure

If you require this policy in a different format please ask a member of staff

Date of Approval November 2014

Review due November 2017

Scottish Secure Tenancies

Mutual Exchange Procedures

Policy Statement

Elderpark Housing Association will ensure that mutual exchange applications are processed in accordance with legal provisions and contractual terms contained within the tenancy agreement. The Association will also ensure the promotion of equal opportunities by providing a summary of the mutual exchange information and documentation in different formats/languages as required.

Exchanges: Legal Provisions

Legal provisions exist that govern exchange requests by Scottish secure tenants. (Housing (Scotland) Act 2001, section 33(1)). In order to fulfil these legal obligations, it is necessary to implement detailed procedures to offer tenants' a quality service that meet their needs and preferences as far as possible.

Request for a Mutual Exchange

Scottish secure tenants have a legal right to exchange their tenancy with other Scottish secure tenants. This applies also where tenants are tenants of different landlords. This right of exchange is dependent on the tenants first obtaining the landlord(s) written consent. Consent may be refused only if the landlord(s) has/have reasonable grounds for refusal.

Grounds for Refusing Consent

There is no definitive list of grounds for refusing consent. Each case requires to be assessed on its merits. Specific reasons mentioned in the Act where it is deemed reasonable to refuse consent are now detailed followed by commentary on interpretation.

- A Notice of Proceedings has been served that specifies any of grounds 1 to 7 (Schedule 2)
- An order for recovery has been made against the tenant
- The house occupied by the tenant has been provided by the landlord for employment purposes
- The house has been designed/adapted for occupation by a person whose special needs require such accommodation and, following the exchange, no person with these special needs would occupy the house
- The accommodation of the other house is either substantially larger than that required by the tenant and her/his family, or it is not suitable to the needs of the tenant and the tenant's family
- The exchange would result in statutory overcrowding

Commentary on Reasons for Refusal

It is stressed that there is no legal definition of reasonableness and each case must be assessed on its particular merits. Further, the above list is not definitive and other reasons may exist for refusing exchange applications, for instance, inability by the new tenant to meet the terms of tenancy such as payment of rent.

Notice of Proceedings in Force

It is clearly reasonable to refuse consent to exchange where the Association has served a Notice of Proceedings and is considering raising court action for recovery of possession where the tenant has breached the terms of let. The Housing Officer must check, however, the details of each case. A Notice may be in force, for example, for a breach that has been remedied, for example, repayment of rent outstanding. In such cases, the Officer should withdraw the Notice and proceed with the exchange request accordingly.

Order for Recovery of Possession

Where the Association has been granted an order for recovery of possession, no exchange request should be granted as the Association will be seeking to evict the tenant(s) by (or close to) the date specified in the extract decree.

Tied Accommodation

Where the tenant occupies accommodation as part of her/his contract of employment, exchange requests should be refused, as this would have adverse effects upon the tenant's ability to fulfil work duties. One example of this situation would be wardens who reside within sheltered housing in order to carry out their duties more effectively.

Housing Designed/Adapted for Person with Special Needs

This provision is intended to ensure that accommodation provided for people with special needs continues to be reserved for this purpose. It is important to note that the Act does not specify that it must be the tenant who has special needs. For example, the house could have been adapted for a member of the tenant's family with special needs such as a wheelchair user. When considering requests, therefore, it is necessary to check if any members of the incoming tenant's household may have the special needs requiring such accommodation.

Substantially Larger Accommodation

The legislation empowers landlords to refuse applications where, as a result of the exchange, the accommodation being taken up would be substantially larger than that required by the tenant and the tenant's family. There is no definition of 'substantially larger' and each case must be assessed on its merits. For example, a single person wishing to exchange into a 5 apartment sized house would probably satisfy this criterion.

Accommodation Unsuitable to Tenant's (and Tenant's Family) Needs

This is not defined in statute and Housing Officers must assess each case on its merits. In carrying out this assessment, objective criteria should be applied as follows:

Medical Factors - House not suitable because of its location, for example, a member of the incoming tenant's household has serious medical problems and is unable to manage stairs.

Special Needs - House not suitable because of its location and the person's particular needs, for instance, a wheelchair user unable to negotiate stairs. Remember, however, that landlords are legally required to make reasonable adjustments to premises to ensure that service provision does not discriminate on grounds of disability. Thus, in the case of a ground floor flat, provision of a ramp may enable the exchange to proceed. Before refusing applications on these grounds, therefore, Housing Officers must explore what steps could be taken to make the accommodation suitable to the needs of the tenant and the tenant's family.

Effects of the Exchange on the Tenant (and Tenant 's Family)

The tenant may specify that they seek accommodation where there is less noise. Moving to a tenemental property with a high ratio of children may entail that such a property is potentially unsuitable for such a tenant. Again, though, it is critical that the Housing Officer should base refusals on accurate information provided by the tenant, as well as explore options. For example, a high level of children in flatted property does not mean that noise levels will be necessarily high, particularly where property has been given adequate sound insulation.

Overcrowding

The statutory overcrowding standard is laid down by the Housing (Scotland) Act 1987, sections 135-137. When applications to exchange are received, the Housing Officer should assess household size to evaluate whether it fails to meet the legal standard. This standard has already been detailed in the assignment procedures.

Procedure for Mutual Exchange

1) Prior to an exchange being approved, the tenants must receive the landlord's written consent. The person with whom they wish to exchange with must also obtain permission from his/her landlord who may have certain conditions regarding Mutual Exchanges.

2) A tenant wishing to exchange houses with another tenant must initially complete the Association's standard mutual exchange application form (Document 1). This form details the name, address and landlord details of the person they wish to exchange with. Likewise the other party must also write to their landlord giving details of the proposed exchange, including details of the other house (size, type etc.).

3) Following this the Housing Officer must complete the Association's standard checklist (Document 2) to determine whether to proceed with the mutual exchange application. When determining this, the Housing Officer should refer to the following conditions as per the Association's Mutual Exchange Policy.

- a) The Association's tenant must have been resident in the property for at least 6 months.
- b) The exchange must not result in overcrowding or significant under-

occupation.

c) Any necessary repairs or replacements, which are the responsibility of the outgoing tenant, must be dealt with to the Association's satisfaction before an exchange can proceed. The tenant must accept the Association's property as seen. The Association will not carry out any redecoration.

d) Tenants wishing to exchange will be visited by one of the Association's Housing Officers or a nominated landlord if out with the Association's area of operation. The Association tenant's house will be inspected.

e) If the exchange is approved the incoming tenant must occupy the property within a reasonable period. Failure to take up residence within one month will result in the Association taking legal proceedings to repossess the property.

f) For the exchange to be permitted, the incoming tenant must not be in arrears with any previous landlord to the value of more than one month's rent charge. The outgoing tenant must not have a total tenancy debt greater than one's month's rent. If they do the mutual exchange must be refused at this point. They can enter a repayment agreement over three consecutive months to reduce the debt to less than one month's rent. Provided they have not broken the arrangement for at least three consecutive months they can reapply for a mutual exchange.

g) If Elderpark Housing Association's property involved in the exchange has been specially adapted for a tenant with particular needs then the incoming tenant must show that they have similar needs and will put these adaptations to use themselves.

h) The incoming tenant must occupy the property for at least six months

i) In the event of any of the parties giving false or misleading information or deliberately withholding relevant information, the Association will take action for recovery of possession or to reverse the exchange through the courts.

j) If a mutual exchange is completed the tenants cannot reverse the exchange unless both parties agree to it. The tenants must come to an agreement to reverse the exchange before they approach the Association. Any reversal of a mutual exchange will be subject to the same conditions as all mutual exchanges as laid out above.

4) If the mutual exchange application is to proceed, the Housing Officer will write to the landlord of the other party to advise that a mutual exchange application has been submitted and obtain a tenancy reference. (Document 3) **The Housing Officer must ensure that they respond to the Mutual Exchange Application within one month as failure to do so will mean that consent is deemed to have been granted.**

5) Before making a decision on the application the Housing Officer must contact the other landlord to ascertain if there are any objections to the exchange (Document 4). A house inspection must be completed on our tenant

before any decision can be made. This is to ensure that there are no repairs issues before an exchange is granted. The incoming tenant must accept the property in its current condition. Tenants may also be entitled to compensation on termination of tenancy if they have carried out certain types of improvements for which permission has been granted. After full consideration of the application, the Housing Officer will either consent or refuse the application where it is reasonable to do so.

6) Where the mutual exchange involves a move to new supply housing the Housing Officer must serve a Notice of Limitation on right to Purchase New Supply Housing **before** they grant permission. (Document 9, 9a & 9b) - Thereby letting the person know that they do not have the right to buy.

7) Where the Association grants permission, the tenancies are terminated and tenants will be required to sign new tenancy agreement. The Housing Officer should advise tenants of their successful application. (Document 5) The Housing Officer must also liaise with the Housing Officer of the other landlord to ensure that the termination dates and tenancy start dates are the same. The Housing Officer must also notify the other landlord of their decision in writing detailing the effective date. (Document 6) The Housing Officer should then contact maintenance to arrange for a gas safety check to be done on the property before the existing tenant moves out.

8) Where the Association refuses permission, reasons for the refusal must be notified in writing within one month of receipt of application. (Document 7) The Housing Officer should also notify the other landlord of their decision. (Document 8) Tenants must be advised of their appeal rights to the sheriff court in cases of refusal. This is in accordance with good practice by ensuring that tenants are encouraged to use appeal mechanisms available and ensure a right to a fair hearing. This is important under the **Human Rights Act 1998, Article 6** that provides for individuals with the right to a fair hearing.

9) For monitoring purposes the association includes mutual exchanges within the allocations report and within our equal opportunities annual report.

Document 1 Exchange of Tenancy Standard Application Form

Exchange of Tenancy Standard Application Form

Name of Tenant	
Name of Joint	
Address & Postcode	
Date of application	
Tenancy start date	

Household		
Name	Date of Birth	Relationship to Tenant

Type of House	
Size of house	
Type of heating	
Adaptations	

Is this house the matrimonial home? Yes/No

If yes, has your spouse consented to this transaction? Yes/No

(If no, the spouse's consent will be required to protect the spouse's occupancy rights.

Discuss appropriate methods of contacting the spouse to seek consent to the transaction)

Is this a joint tenancy? Yes/No

If yes, has the joint tenant consented to this transaction? Yes/No

(If no, the consent of the joint tenant will be required. Discuss appropriate methods of contacting the joint tenant to seek consent to the transaction)

Other Party Details	
Tenants Name	
Joint Tenants name	
Address & Postcode	
Landlord Name	
Landlord Address & Postcode	
Tenancy start date	
Property Details	
Type of House	
Size of House	
Adaptations	
Type of heating	

Household Details:		
Name	Date of Birth	Relationship to Tenant

Declaration by Both Parties

We understand that to the best of my knowledge the details I have given on this application form are true and correct

We understand that any false or misleading information or withholding relevant information, now and at any time, may result in Elderpark Housing Association taking court action to terminate the tenancy and recover possession of the property.

We give permission to Elderpark Housing Association to make any necessary enquiries in connection with my application for housing to verify the circumstances stated on the form

(For tenants who have the preserved RTB and/or a Fair Rent). I agree to seek further legal advice as I understand that if I voluntarily move I may be giving up my preserved RTB and Fair Rent which is registered with the Rent Office.

I understand and agree to the conditions noted in the declaration.

Applicant: _____ Date: _____

Joint Applicant: _____ Date: _____

Other party applicant: _____ Date: _____

Other party joint applicant: _____ Date: _____

For Office Use	Initials
Tenancy Reference Number:	
Date Tenancy Commenced:	
Rent Account Balance:	
Stage of Recovery Action:	
Current Anti-Social Action:	
Proposed tenant Details	
Date passed to HO for decision:	
Decision:	
If refused, state grounds for	
Notification Letter to Tenant:	
Lease Signed:	
Tenancy Change recorded on	

Document 2 - Standard Staff Checklist

Standard Staff Checklist

- | | | |
|---|--|--------|
| 1 | Is a Notice of Proceedings in Force? | Yes/No |
| | If Yes, is it reasonable to refuse an exchange request? | Yes/No |
| | If Yes, specify reasons why | |
| 2 | Is an order for recovery of possession in force? | Yes/No |
| | If Yes, refuse request to exchange | |
| 3 | Is house provided by the Association for the tenant's employment | Yes/No |
| | If Yes, refuse request to exchange | |
| 4 | Is house designed/adapted for occupation by person whose special needs require such accommodation? | Yes/No |
| | If Yes, refuse exchange unless person exchanging has special needs for which the house has been designed or adapted? | |
| 5 | Is the house substantially larger than that required by the incoming tenant and the incoming tenant's family? | Yes/No |
| | If Yes, refuse exchange | |
| 6 | Is the accommodation unsuited to the incoming tenant's needs, or the needs of the incoming tenant's family? | Yes/No |
| | If Yes, refuse exchange | |
| | Would consenting to the request result in statutory overcrowding | Yes/No |
| 7 | If there is another landlord involved, check if it is a fully mutual co-operative association. In such cases, the tenant must both be a member of the co-operative when the exchange takes place. | |
| | Application Approved | Yes/No |
| | Application Refused | Yes/No |
| | If application has been refused, has applicant been advised of appeal rights? | Yes/No |

Date:

Document 3: Letter to Other Landlord Re: Mutual Exchange Application

Landlord Name
Landlord Address

Date

Dear Sir/Madam

Re: Mutual Exchange Application

(Name and address of Association's tenant) has applied for a mutual exchange with (name and address of other Association's tenant). I would be grateful if you could complete and return the attached tenancy reference.

Please contact me on 0141 440 2244 to confirm if you have received a mutual exchange request from your tenant or if queries regarding this.

Yours sincerely

Housing Officer



Tenancy Reference

31 Garmouth Street
 Glasgow G51 3PR
 0141 440 2244

housing@elderpark.org

Name & Address of Tenant			
Tenancy Dates:	Start Date:	End Date:	
Where the tenant is a Former Tenant, please confirm how the tenancy ended. (e.g. satisfactorily given up, abandoned, evicted)			
Tenant's previous address immediately prior to taking up tenancy			
Composition of household (names, dates of birth and relationship to tenant)	Name	DOB	Relationship
Does the tenant keep any notes?			
<i>Rent Information</i>			
Balance on Rent Account			
If in arrears, please give details of any repayment arrangement and whether or this has been maintained for a minimum of 3 months			

<i>Property Size & Condition</i>						
Property Size:	Studio	2apt	3apt	4apt	5apt	6apt
Does the Property Suffer from Dampness:	Yes	No	Not inspected	Not sure		
Does the property have central heating	Yes	No	Partial CH	Not Sure		
Is the property considered below	No	Yes			Not Sure	

<i>Tenancy Conduct</i>
Please confirm whether tenancy has generally been conducted in satisfactory manner and tenancy agreement adhered to:
Please confirm whether tenant or any member of their household has any history of alleged anti- social behaviour
Is there any other information you consider relevant to the tenancy that would assist with the tenant's application for re-housing with our Association?

<i>Details of Person Completing Form</i>			
Name			Designation
Signature			Date

Document 4: Letter to Other Landlord re: Objections to Mutual Exchange

Landlord Name
Landlord Address

Date

Dear Sir/Madam

Re: Mutual Exchange Application

Further to my previous correspondence regarding the mutual exchange application between (Name and address of Association's tenant) and (name and address of other Association's tenant), I write to confirm that Elderpark housing association has no objections to this request being granted.

I would be grateful if you could confirm your position in writing as to whether you have any objections to this request being granted.

Yours sincerely

Housing Officer

Document 5: Acceptance of Mutual Exchange Application

Name Address

Date

Dear (Name of tenant)

Re: Request to Exchange Scottish Secure Tenancy

Further to your application to exchange your tenancy with (name of other tenant) at (address of property), I am pleased to advise you that your application has been successful.

Please contact me to arrange a meeting to terminate your existing tenancy and make arrangements to sign a new tenancy agreement.

If you have carried out certain types of improvements to your house for which you received formal written consent from the Association, you may also be entitled to compensation. Please advise me if this may apply in your case.

I look forward to hearing from you.

Yours sincerely

Housing Officer

Document 6: Letter to other Landlord Notifying of Acceptance of Mutual Exchange

Name & address of landlord

Date

Dear (Housing Officer Name)

I am writing to advise that the mutual exchange request between (Name and address of Association's tenant) and (name and address of other Association's tenant) has been granted.

The effective date is (mutual exchange effective date).

Please contact me on (telephone number) if you wish to discuss this. Yours sincerely

Housing Officer

Document 7: Refusal of Mutual Exchange Application

Name Address

Date

Dear (Name of tenant)

Re: Request to Exchange Scottish Secure Tenancy

Further to your request to exchange your tenancy with (name of other tenant) at (address of property), I write to advise you that your application has been refused for the following reason(s):

1

2

3

Please note that you have a legal right to appeal the decision through the Sheriff Court. If you wish to appeal, contact your solicitor or local advice centre for advice, for example, the Citizens' Advice Bureau. Alternatively, the Association will be willing to provide you with further details regarding how to appeal.

Yours sincerely

Housing Officer

Document 8: Notification to Other Landlord of Refusal of Mutual Exchange

Landlord Name
Landlord Address

Date

Dear Sir/Madam

Re: Mutual Exchange Application

I refer to my previous correspondence regarding the mutual exchange request from (Name and address of Association's tenant) and (name and address of other Association's tenant) and write to confirm that we have refused this request for the following reason:

-

Please contact me on 0141 440 2244 if you wish to discuss this further.

Yours sincerely

Housing Officer