

# East Devon District Council

## Mutual Exchange Policy

Version 2.0

Officer Responsible: Housing Allocations Manager

Authorised by the Housing Review Board September 2021

History of most recent Policy Changes – Must be completed

Date	Item	Change	Origin of change (eg change in legislation)
08/10/21	14	Data Protection considerations	

### 1 Previous Policies/Strategies

Mutual Exchange Policy

### 2 Why has the council introduced this policy?

To explain how the Council's Housing Service will deal with mutual exchanges requests from tenants.

### 3 What is the council's policy?

#### 3.1 Policy Objectives

3.1.1 This policy sets out East Devon District Council's (EDDC) approach to dealing with tenants who wish to carry out a mutual exchange.

EDDC is keen to promote mutual exchange as a way of encouraging and promoting tenant mobility. We will do this by:

- Informing tenants of their right to exchange in the tenancy agreement, and tenants handbook.
- Provide an opportunity for tenants to move anywhere in the country without needing to go through the choice based lettings (CBL) system, especially where they do/would not have a high priority for a move;
- Promote mutual exchanges as a method to enable tenants to choose a home in the area they wish to live in
- Provide advice and assistance for those carrying out an exchange
- Facilitating access to an online mutual exchange register

### 4 Policy Aims

4.1 The key aims of this policy are to:

- Provide a framework to ensure that mutual exchanges are carried out efficiently and fairly in full compliance with legislation and the tenancy agreement.
- Support the Government's nationwide social home swap programme to give tenants a wider choice in where they want to live.
- Minimise costs to EDDC through a comprehensive inspection and approval process prior to and upon exchange taking place
- Encourage the use of mutual exchanges so EDDC will achieve the best utilisation of stock while minimising the risks of inappropriate moves.

## 5. Who the Policy Covers

5.1 This policy covers EDDC social housing tenants, including those on secure and flexible tenancies living in general purpose and supported housing stock

5.2 The policy does not cover tenants with introductory tenancies and licenses

## 6 Relevant Legal and Regulatory Information

6.1 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. The table below shows what grounds apply under both of these acts.

Schedule 3 Of the Housing Act	Schedule 14 Of the Localism Act	Grounds for Refusing a Mutual Exchange
	Ground 1	When rent lawfully due from a tenant under one of the existing tenancies has not be 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 Land Lord has served 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 in reasonably needed by the proposed assignee.
Ground 4	Ground 8	The property is not reasonably suitable to the assignee and their household
Ground 5	Ground 9	The property is part of 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 Land Lord or Local Authority or a new town corporation, housing action trust, urban development corporation or the governors of a grant aided school
Ground 6	Ground 10	The Local Landlord is a charity and the proposed assignee's occupation of the property would conflict with the object of the charity

<b>Schedule 3 Of the Housing Act</b>	<b>Schedule 14 Of the Localism Act</b>	<b>Grounds for Refusing a Mutual Exchange</b>
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person and if the assignment went ahead a physically disabled person wouldn't be living there
Ground 8	Ground 12	The Land Lord 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 these special needs and if the assignment was to go ahead no person with those special needs would be living there
Ground 10	Ground 14	The dwelling is subject of a management agreement where the management is a Housing Association of which 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 and is not willing to become one
Additional ground (Housing Act 2004)	Ground 6	An injunction order under section 153 of 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.

## 7. Types of Exchange and Tenancies

Mutual exchanges are carried out in one of two ways:

- Through assignment
- Through surrender and re-grant of tenancies

7.1 Assignment is the swapping of tenancies at the same time as homes are exchanged. The incoming tenant will take on the rights and responsibilities of the tenant they have swapped with. This is used when those exchanging homes hold tenancies with a similar security of tenure

7.2 Section 158, Localism Act 2011 provides that surrender and re-grant will take place where:

- at least one of the tenants who wishes to transfer has a secure or assured tenancy which commenced before the 1<sup>st</sup> of April 2012
- at least one of the tenants has a flexible tenancy or fixed term assured shorthold tenancy

7.3 Surrender and re-grant does not apply where a secure or assured tenant exchanges with a:

- tenant with a fixed term tenancy of less than two years
- affordable rent tenant (the landlord can charge up to 80% of what it would cost if you were renting the property privately)
- intermediate rent tenant (tenants who pay rent levels below the normal market rent level in that area, although rents are higher than what a tenant would normally expect to pay in social housing)
- mortgage rescue tenant (typically where a housing association buys their property and rents it back to them as assured shorthold tenants)

7.4 Tenants who hold a lifetime (secure or assured) tenancy that was granted before the 1<sup>st</sup> of April 2012 have their security of tenure protected by law. Tenants who hold a secure or assured tenancy granted before this date therefore cannot swap tenancies (be assigned) with a fixed term or flexible tenant, though there are exceptions.

This legislative protection will not apply when a lifetime tenant chooses to exchange with a fixed term tenant on an affordable rent.

7.5 Secure or assured tenancies granted after the 1<sup>st</sup> of April 2012 will not retain security of tenure ( not protected by s158, Localism Act 2011) if they exchange. A mutual exchange will take place by deed of assignment. If a secure or assured tenant wants to exchange with a fixed term tenant they lose their security of tenure.

7.6 The table below sets out whether an exchange by assignment or by surrender and re-grant will take place.

Tenant 1	Tenant 2	Mutual Exchange Assignment or Surrender and Re-Grant
Secure	Secure	Deed of Assignment
Secure	Assured	Deed of Assignment
Secure pre 2012	Flexible/Fixed Term	Surrender and re-grant – each tenant gets a new tenancy with the same or similar level of security they currently have.
Secure pre 2012	Flexible/Fixed Term	Deed of Assignment
Flexible/Fixed Term	Flexible/Fixed Term	Surrender and re-grant – each tenant gets a new tenancy with the same or similar level of security they currently have.

## 8. Landlords consent to exchange

8.1 All those involved in the exchange must complete a mutual exchange application form

8.2 Before EDDC will proceed with the exchange a payment of £50 towards the electrical check and £50 for the gas check must be paid by the tenant

8.3 This will be refunded to the tenant if the exchange does not proceed and the cancellation of the exchange is not the fault of the tenants

- 8.4 Once payment has been made and all completed forms have been received EDDC will acknowledge the exchange and notify all the proposed exchange partners of the decision within 42 days.
- 8.5 EDDC will not withhold consent for a mutual exchange on the grounds of under-occupation unless the incoming tenant will under-occupy the property by more than one bedroom.
- 8.6 When determining bedroom need EDDC will follow Devon Home Choice Procedure by allowing one bedroom for each of the following:
- A single person
  - A married or cohabiting couple
  - A person aged 16 years or over
  - Two children of the same sex and under the age of 16 years old
  - Two children under the age of 10 years old regardless of their sex
  - Any other child
  - Woman/couple
- 8.7 A couple or woman who is pregnant will be deemed to have a two bedroom need.
- 8.8 EDDC will request a reference for the assignee from their Landlord and consent will not be given until the reference is received.

## **9 Safety checks**

- 9.1 EDDC will carry out a number of property inspection to ensure that the property is in a good state of repair. These inspections will include the following:
- Inspection by a maintenance surveyor who will check the structure, fixtures and fittings in the property. Any changes, damage or fittings that are the tenant's responsibility and not up to EDDC standards will have to be rectified before the exchange can proceed.
- In the these instances a second visit would be arranged for the agreed works to be signed off by the maintenance surveyor  
Any problems found by this inspection that are the responsibility of EDDC will be rectified by the Council.
- Electrical inspection
  - An inspection by the Housing Allocations team will be carried out to determine the cleanliness of the property and garden and discuss items that are being left by the outgoing tenant for the assignee
  - A gas check will be carried out on the day of the move with the gas being capped when the outgoing tenant moves out and re-instated and checked when the incoming tenant moves in
- 9.2 Safety certificates will be provided to new residents for their own information and a copy held on the council's asset management system.
- 9.3 EDDC will require tenants to sign to accept liability for any non-standard alterations or installations and any items which tenants have agreed with each other to leave in the property.

- 9.4 Incoming tenants will be entitled to day to day repairs and included in any EDDC upgrade programme
- 9.5 Assignees moving to sheltered accommodation who had claimed in their application that they had no need for an adapted property, who then apply for adaptations will not be considered for 12 months unless there are exceptional circumstances.

## **10. Exchanges without consent**

- 10.1 If a tenant does not obtain EDDC's written consent or the application to exchange was withheld or rejected, the exchange will be unlawful. Both tenants will be in the position of:
- having no legal interest in the tenancy at the property at which they are living;
  - will be liable for the rent and other obligations of their original respective tenancies; and having lost their security of tenure because they are no longer occupying their original home as their only or main home.
- 10.2 In these instances the available options to EDDC are to:
- Consider making the exchange legal by completing the new Tenancy Agreements or Deed of Assignment, and Licence to Assign forms retrospectively;
  - Demand that both tenants return to their original homes; or terminate the tenancies by serving a Notice To Quit (NTQ) and without prejudice Notice of Seeking Possession (NOSP) on the original homes to seek possession of the properties.

## **11. Rent Arrears**

- 11.1 EDDC can withhold consent to a mutual exchange because a tenant has rent arrears as laid out below:
- The tenant or proposed exchange partner has a possession order outstanding against them, whether or not it has already come into force.
  - The tenant or proposed exchange partner has outstanding possession proceedings against them or a NOSP is still in force.
- 11.2 EDDC will make it a condition of granting permission that any rent arrears need to be cleared before the exchange can proceed.

## **12. Succession**

- 12.1 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 EDDC.
- 12.2 Assignment by way of mutual exchange does not count as a statutory succession.

## **13. Permission for Exchange**

13.1 EDDC will only give permission for an exchange to take place when the consent of all other landlords involved has been obtained and all the following requirements have been met:

- A satisfactory report has been received from landlords of other tenants involved in the exchange concerning tenancy conduct including rent payments, anti-social behaviour and property condition.
- The report addresses support needs the incoming tenant has.
- Agreement has been reached between landlords that the exchange may go ahead.

13.2 Once the agreement has been reached a letter of confirmation will be sent to all parties involved with the time and date for the completion of paperwork taking place.

13.3 The assignee will receive the following information:

- Tenancy Agreement with confirmation of the tenancy they will be taking on
- Tenant's handbook
- Copy of the report from the Maintenance Surveyor
- Copy of the electrical and gas reports
- Disclaimer form for items being left in the property by the outgoing tenant

#### **14. Data Protection considerations**

**b) The collection and use of tenant's personal data will not exceed that agreed to in their tenancy agreement**

If selecting option c) – please provide a summary of additional personal data required and how this will be obtained and used below.

Click or tap here to enter text.

The [EDDC Data Protection Policy](#) provides further information on how we store and use personal information.

The following privacy notice(s) provide further information on how we will use tenant's personal data, how it is gathered, and how long we will retain this information, and what rights tenants have in relation to this.

Housing Allocations - Continuous Recording of Social Housing lettings and Sales  
(CORE)

Choose an item.

All our privacy notices can be found on the EDDC website  
(<https://eastdevon.gov.uk/access-to-information/data-protection/privacy-notices/>)

**15. Who authorised the policy/strategy and date of authorisation.**

Authorised by Housing Review Board in September 2021

## **16. Relevant Policies and Procedures**

- 16.1 Mutual Exchange procedures
- 16.2 Allocations Policy
- 16.3 Devon Home Choice Policy and Procedures.

## **17 Policy Date for Review and Responsible Officer**

Review date: 1 September 2025.

This policy will be reviewed every 4 years or sooner if amendments are required following changes to relevant legislation

Responsible officer: Housing Allocations Manager

Reviewed by Housing Allocations Manager July 2021