



Draft Mutual Exchange Policy

Housing Resident Services

August 2025

Version - Draft

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Introduction

The Housing Act 1985 and the Localism Act 2011 provides all eligible tenants with the right to exchange their home with another eligible tenant in a process known as 'mutual exchange'. This exchange can involve more than two parties but can only take place with the written permission of all landlords, and subject to a number of provisions outlined further in this policy.

The benefits of increasing home swapping opportunities to social housing tenants and providers alike, as well as the wider public sector, have long been recognised by New Forest District Council and help us to achieve our 3 main People Priorities as part of our Corporate Plan

The Consumer Standards, set by the Regulator of Social Housing (RSH), have also added further requirements around how tenants are treated in all our engagement with them, and the information that they can expect from us.

This policy outlines New Forest District Council's approach to Mutual Exchanges and details the process for all parties.

Scope

This policy applies to all eligible tenants, as defined under the 1985 Housing Act (as amended). This means all New Forest District Council's secure and flexible fixed term tenants, unless that tenant falls under one of the fourteen exemptions in law, would be included.

Policy Aims and Objectives

The aim of this policy is to enable the delivery of New Forest District Council's Mutual Exchange scheme in line with all relevant legislation and guidance, and to allow for the fair and consistent application of the process.

This policy also aims to advise officers, residents and partners how the scheme will operate, the eligibility criteria and grounds for refusal. It will further seek to:

- Promote mutual exchange as an effective option to meet housing needs in the district.
- Improve housing options for social housing tenants within the district, and to those needing to move to the area for work or personal reasons.
- Promote more effective use of the Council's existing housing stock by enabling tenants to move to accommodation more suitable for their needs. This will further enhance efforts to:
 - Address under-occupancy and/or overcrowding pressures.
 - Assist in releasing suitably adapted homes for those that need them.
 - Help to relieve pressure on the Council's Housing Register and Housing Options services.

Understanding the Legal Framework Behind Mutual Exchange

We want tenants to feel confident and informed when considering a Mutual Exchange. That's why our policy follows important laws and regulations designed to protect their rights and ensure fairness. These consist of:

Housing Act 1985 & Localism Act 2011

These laws set out the rules for how mutual exchanges work and who is eligible.

Regulator of Social Housing (RSH)

We follow the RSH's Consumer Standards, which help ensure we provide a fair and transparent service.

Equality and Human Rights

We are committed to treating everyone fairly. Our policy respects your rights under the Equality Act 2010 and the Human Rights Act 1998.

This policy also complies, and is consistent with, the provisions in New Forest District Council's Housing Allocation policy, secure and flexible fixed term tenancy agreements, and has had regard to all relevant internal policies and strategies.

All tenants with secure or flexible fixed term tenancies have the right to exchange their homes with another qualifying tenant. Both tenants need the written consent of the landlord, but this will not be withheld except on one or more of the grounds specified (Appendix A).

Further protection is afforded to those who held secure tenancies prior to April 2012 who exchange with tenants on flexible fixed term tenancies.

Landlords must provide a written decision to the tenant within 42 days of receiving an application for Mutual Exchange, and tenants have the right to enforce decisions via the County Court should landlords fail to do so.

Landlords can also not rely on any of the grounds for refusal if they do not provide a written decision within the time limit.

As part of the RSH's Tenancy Standard, all registered providers are required to provide a service for Mutual Exchange to all eligible tenants free of charge. See section on Right to Exchange for further details of the service we have adopted.

Links to other strategies and policies

This policy should be read in conjunction with the following strategies and policies:

- Housing Landlord Strategy (In development)
- Housing Landlord Vulnerable Persons' policy (In development)
- Housing Landlord Anti-social behaviour strategy and policy
- Good Neighbourhood Management Policy
- Housing Hate Crime Policy
- Housing Landlord Domestic Abuse Policy
- Allocations Policy
- Empty Homes and Mutual Exchange Policy
- Gas Safety Policy
- Electrical Safety Policy
- Condensation, Damp and Mould Policy

Right to Exchange

All New Forest District Housing tenants who have a secure or flexible fixed term tenancy are eligible for Mutual Exchange.

Tenants can exchange with tenants of any private registered provider of social housing anywhere in the country, including:

- Other Local Authorities
- Arms Length Management Organisations (ALMOs)
- Housing Associations, and
- A Housing Trust that is a charity.

Tenants from other organisations or local authorities must be on a secure or flexible fixed term tenancy.

Tenants on introductory tenancies will not be considered for a Mutual Exchange until such time as they have successfully completed their introductory period.

Types of Exchange

In order to exchange properties, tenants first need the written consent of their landlords. If agreed, the transfer of tenancies can only be carried out through one of two methods.

An assignment applies when both tenants hold tenancies with a similar security of tenure. They will be asked to sign a 'Deed of Assignment' which will allow the incoming tenant to take on the responsibilities of the outgoing tenant. In effect, each tenant takes on the other's tenancy.

'Surrender and re-grant' is where tenants surrender their current tenancy and are then granted a new tenancy at the new property with similar levels of security as their current tenancy. This is applicable in those cases where one of the tenants had a secure tenancy that predates 1 April 2012, and which is protected in law. In these cases, tenants effectively take their tenancy with them when they exchange.

Homeswapper

New Forest District Council subscribes to a national exchange scheme called 'HomeSwapper'®. This makes the scheme free to all New Forest District Housing tenants.

Tenants will be required to register on the website in order to advertise their property and to find potential exchanges locally and nationally.

New Forest District Council is only able to make this freely available to tenants of New Forest District Council.

Alternative ways to exchange

Tenants may also use a number of other means to find a Mutual Exchange partner. These may include local shop windows, newspapers and, increasingly, social media providers. There are also a number of other exchange websites that may charge a fee.

It is illegal for tenants to offer incentive payments to each other in order to secure a transfer, or to encourage someone to transfer. Any attempt to do so will lead to the automatic refusal of an exchange and may lead to eviction proceedings if a property is secured in this way.

Mutual Exchange process

The Mutual Exchange process is tenant-led. This means that it is tenants themselves that are responsible for finding a prospective exchange partner.

Tenants are also responsible for ensuring that any checks required regarding the condition of prospective properties are made, and for confirming any outstanding repairs or damage that will become their responsibility, particularly for any non-standard alterations that the previous tenant may have made.

Once a New Forest District Council tenant has found another tenant to exchange with, and they are satisfied as to both the condition of the property and any issues that they may become responsible for, both parties must complete a mutual exchange application form and return it to the Tenancy Sustainment team.

Following this, the Tenancy Sustainment Assistant will arrange a visit for a Maintenance Surveyor to inspect the property and let the tenant know if there are any works to be undertaken before the exchange can proceed.

Both tenants seeking to exchange will be provided with a copy of the inspection report, including any items that have been gifted by the previous tenant and any works (including photos) that are the tenant's responsibility.

Repairs that are the responsibility of the tenant will need to be carried out prior to the exchange taking place, or the incoming tenant will need to sign a waiver agreeing to take the property 'as seen'.

The exchanging tenant will be issued with a final written decision within 42 days of receiving their application. This will also detail any reasons for refusal and outline their right to appeal the decision should they think it is wrong.

The Council cannot refuse an application on any of the grounds specified if we do not provide this written confirmation within 42 days.

The Council retains the right to use our discretion to allow mutual exchanges to go ahead even if one of the 14 conditions for refusal has been met, so long as certain conditions are met, such as the repayment of any outstanding rent arrears.

Overcrowding will only be permitted in very specific circumstances, due to the lack of larger properties in the district. One example may be where a tenant has been assessed as having a four-bedroom need and wishes to swap to a property that has an additional room, such as a separate dining room, which has potential to be used as another bedroom.

Where the proposed exchange is between a New Forest Housing tenant and the tenant of another qualifying organisation, all landlords involved will provide and request references on the outgoing and ingoing tenants respectively.

Once an exchange has been approved, both tenants will be asked to come into the main office at Appletree Court, Lyndhurst and sign a 'Deed of Assignment'

before an exchange can proceed.

If the tenancy is a joint tenancy, both tenants will be required to attend an appointment at the Council office to sign the Deed of Assignment. The exchange cannot be completed without sufficient identification provided at the appointment.

Only once the deed has been signed and all other relevant paperwork is in place can the exchange complete. If a tenant moves without this, then they will be putting the tenancy in jeopardy and could lose their home as a result. Any further duty by the Council to rehouse them is likely to be limited.

Gas and Electrical Safety

New Forest District Council housing team has a statutory duty to ensure that any New Forest District Council owned gas appliances are safe to use at the time the incoming tenant takes up occupancy, and that any tenant owned appliances that were removed do not cause unsafe conditions.

Arrangements will be made for the appropriate gas and electrical safety checks to be carried out, and tenants will be expected to allow reasonable access for this to take place, as set out in their tenancy agreement.

It is the responsibility of the incoming tenant to ensure the safe and legal installation of any household appliance. They must ensure that they instruct, and pay for, a Gas Safe Engineer to connect, test and certify any new or used gas cooker installation or other appliance, or make arrangements for a qualified electrician to connect an electrical cooking appliance.

Guidance and Support

The RSH has implemented several standards that must be met across all Council services. These include action to deliver a fair and equitable outcome for tenants from their dealings with the Council, publicising services and standards, and providing a clear and accessible complaints service.

Mutual Exchanges are, primarily, governed by the Tenancy Standard, which demands that the service is:

- Available without payment of a fee. New Forest District Council achieves this with its provision of an exchange service through Homeswapper®
- Any mutual exchange service(s) must also be publicised, and details can be found on our website.
- Support must be offered to relevant tenants to access services who might otherwise not be able to access them, and
- Information regarding any implications for tenure, rent and service charges must be offered to any tenant wishing to mutually exchange. How this requirement is met is detailed below.

This policy provides detailed information regarding the various procedures used when assessing applications for a Mutual Exchange. Information regarding the scheme, including this policy, will be made available on the Council's website

Tenants will be given the opportunity to discuss any questions regarding the process when initial contact is made, but tenants may also contact their Tenancy Sustainment Officer outside of this if they require further information or support.

The Tenancy Sustainment Assistant will also check for, and inform, the tenant of any potential implications of the proposed move, such as any changes in their current terms and conditions, service charges or any one-off costs that they may be liable for.

Tenants that are considering exchanging into a property that will lead to under occupation will be offered a financial assessment in order to help them establish if the potential property is affordable for them. The assessment will also focus on whether there are any financial implications arising from the move, such as a reduction in their Housing benefit / Universal Credit entitlement.

Any Mutual Exchange tenant that is considering moving to a property that will lead to under occupation will be required to sign a disclaimer stating that they fully understand the financial implications of exchanging into such a property, including the impact on any benefit entitlement and the consequences of falling into arrears on their future housing prospects.

Tenants that are currently living in an adapted property, need to consider if the exchange property will meet their needs as they may not be eligible for further adaptations to the new property.

New Forest District Council will provide any reasonable additional support required to tenants that may not be able to access the Mutual Exchange service

without difficulty. This may range from providing some additional explanation about the process to registering and searching for matches for a tenant.

New Forest District Council will also provide reasonable support to tenants who do not have access to the internet. The Tenancy Sustainment team can signpost to family, friends, local library internet hubs or arrange a meeting at a local office to assist with the online process.

Decision Making

New Forest District Council is required by law to provide a written decision within 42 days of receiving a completed application for Mutual Exchange.

Should New Forest District Council fail to provide a written decision within this time frame, tenants have the right to enforce a decision by applying to the County Court. In this situation, New Forest District Council will no longer be able to rely on any of the grounds for refusal, as set out in law.

It is important to recognise however, that failure to meet the statutory deadlines by New Forest District Council must not be treated as having been given consent to exchange.

New Forest District Council will not unreasonably withhold consent to exchange properties and will only do so based on the grounds set out in schedule 14 of the Localism Act 2011 (see Appendix A below).

Tenants will be informed of the decision in writing, and this may fall into one of three categories; approved, approved with conditions, or refused.

An application for exchange will be approved when all tenants are not in breach of any tenancy conditions that may allow a refusal, and/or there are no conditions that need to be met prior to exchange.

Approval subject to conditions means that approval will not be granted unless certain conditions are met before the exchange takes place. This may be clearing a rent account or remedying any unauthorised home improvements.

An application will only be refused on the grounds set out below in Appendix A.

Discretion

There may be grounds on which New Forest District Council is able to refuse an application for exchange but may choose to exercise its discretion in certain circumstances.

This may apply where a tenant is in rent arrears and/or are impacted by changes to Housing Benefit/Universal Credit and the exchange may help the tenant to reduce their outgoings (such as when they are downsizing). Discretion may also be used if there are extenuating circumstances, and it is considered that the exchange would benefit the health or welfare of the tenant or a member of their household.

The Tenancy Sustainment Manager (or more senior member of the Housing Management Team in their absence) may use their discretion to grant an exchange based on a report from the Tenancy Sustainment Assistant/Officer with supporting evidence. There is no further right of appeal, although tenants may follow the Council's complaints procedure (see section Appeals procedure below) if they remain unsatisfied with the decision.

Appeals

If a Mutual Exchange application is refused, the tenant(s) will be informed of the decision and the grounds for refusal in writing. Tenants will need to go through the formal complaints procedure if they find the reasons for the refusal to be unsatisfactory, detailed in section on Complaint below.

Where an external landlord has refused the application, it is the responsibility of their tenant to appeal the decision directly with them.

Monitoring and Review

This policy is intended to be a working document and will be reviewed and updated as and when any new legislation and / or guidance is issued.

The Strategic Director for Housing and Communities has authority to make minor amendments in consultation with the Portfolio holder for Housing. This policy will be available on the council's website at www.newforest.gov.uk

Confidentiality and Information Sharing

All personal information relating to tenants will be dealt with confidentially and in accordance with the 2018 Data Protection Act, the EU General Data Protection Regulations and the Council's Privacy policy. Tenants also sign a privacy statement when taking on a tenancy.

A copy of our Privacy Notice is found here
<http://www.newforest.gov.uk/privacy>

However, for an exchange to take place, we are required to share certain information about the applicant's tenancy history with the exchanging landlord. All information held or shared will be in accordance with the above.

How to feedback

You can get this policy in large print, Braille, audio or in another language by contacting our tenancy management team.

Email: tenancy.management@nfdc.gov.uk

Telephone: 02380 285222.

Compliments

To help us provide the best service we can. We would like to hear customer views on the services that they use. If the customer wishes to highlight positive contributions from a member of staff or service, please let us know.

Email: tenancy.management@nfdc.gov.uk

Telephone: 02380 285222

Complaints

If a customer is unhappy with the service, they can refer to our Corporate Complaint procedure - [Corporate Complaints Procedure](#)

Email: complaints@nfdc.gov.uk

Telephone: 02380 285000

Housing Ombudsman

If a customer is unhappy, they can escalate the Housing Ombudsman Service.

Online complaint form: [Online complaint form | Housing Ombudsman Service](#)

Telephone: 0300 111 3000

Appendices

Appendix A

Grounds for refusal under Schedule 14 of the Localism Act 2011

Ground 1	Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
Ground 2	Any obligation under one of the existing tenancies has been broken or has not been performed.
Ground 3	A Court Order (or Suspended Order) for Possession has been made against either property.
Ground 4	Ground 4: The landlord has served a notice of seeking possession on one or more of the grounds 1 to 6 in Part 1 of Schedule 2 of the Housing Act 1985, and that notice remains in force or proceedings have begun.
Ground 5	The landlord has served a notice of seeking possession on one or more of the grounds in Part 2 of Schedule 2 of the Housing Act 1988, and that notice remains in force or proceedings have begun.
Ground 6	<p>The tenant of either property, or someone they live with, has an application pending for, or is already subject of:</p> <ul style="list-style-type: none"> • An injunction order under s.153 of the Housing Act 1996. • An Anti-Social Behaviour Order • A Demotion Order • A Possession Order under Ground 2, Schedule 2 of the Housing Act 1985 <p>A Possession Order under Ground 14, Schedule 2 of the Housing Act 1988</p>
Ground 7	The property is substantially more extensive than is reasonably required by one of the proposed assignees
Ground 8	The property is not reasonably suitable for one for the proposed assignees or their household.
Ground 9	The property is part of, or close to, a building that is held for non- housing purposes, or is situated in a cemetery, and was let in connection to employment with the landlord or a local authority, new town corporation, housing action trust, urban development corporation, or the governors of a grant-aided school.
Ground 10	The landlord is a charity and the proposed assignees occupation of the property would conflict with the objects of the charity.
Ground 11	The proposed property has been substantially adapted to meet the needs of a physically disabled person and, if the assignment went ahead, there would not be a physically disabled person living there.

Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not meet these criteria.
Ground 13	The property is let to people with special needs and there is a special service or special facility nearby to the properties to assist people with those special needs, and if the assignment were to go ahead there would no longer be a person with those special needs living in the property.
Ground 14	The property is subject to a management agreement under which the manager of a housing association of which at least half the members are tenants of the properties subject to the agreement, at least half of the tenants of the properties are members of the association, and the proposed assignee is not, and is not willing to become, a member of the association.

Appendix B

Items that tenants should consider before applying for a Mutual Exchange (This list is not exhaustive and is meant as a guide only. Any specific advice should be sought from your Tenancy Sustainment Assistant/ Officer and / or you should take independent advice)

Changes to your tenancy agreement
Tenants with a secure tenancy that started on or after 01 April 2012 who want to exchange with a tenant who has a flexible fixed term tenancy could lose their secure tenancy.
Tenants who had their security of tenure protected by 2011 Localism Act s.158 will be issued with a new tenancy agreement and a start date after 01 April 2012. This means that if they exchange again, they could lose their secure tenancy.
If you are a secure tenant, check whether or not you retain your right to buy or gain the right to acquire if moving to a housing association property. Check the number of years left on a tenancy if you are taking on a flexible fixed term tenancy.
If you are under occupying and on a flexible fixed term tenancy, you may be asked to move to a smaller property during the tenancy review process.
Succession rights for family members may change.
Properties in new developments may not allow parking permits, or tenancy terms regarding the keeping of pets may vary.
One-off financial costs
Connecting gas and/or electrical appliances and providing safety certificates to verify that this has been done by a Registered Gas Safe Engineer or electrician.

Replacement of fixtures and fittings left by the outgoing tenant, or costs to bring any unauthorised alterations back to a lettable standard.
Removals, mail redirection and disconnection/reconnection fees for services such as television or broadband.
Redecoration, and replacement / copy keys. School uniforms, if you have children
On-going costs
Rent and / or service charges, including the impact of the spare room subsidy if under occupying. Utilities and Council Tax
Increased travel costs, for work or school
Property condition
Responsibility for any outstanding repairs or damage that will become the responsibility of the incoming tenant
Responsibility for the maintenance of any alterations or improvements made by the outgoing tenant.