



# Mutual Exchange Policy

## **1.0 Purpose of the Policy**

- 1.1 Mutual Exchange means tenants living in council and housing association owned housing can swap homes. This can take place between more than two tenants.
- 1.2 Secure tenants have the right to exchange with another tenant of a registered provider of social housing subject to the prior written consent of the Council, which shall be withheld only on specified grounds.
- 1.3 The purpose of this policy is to set out the Council's approach to Mutual Exchange.

## **2.0 Policy Scope and Objectives**

- 2.1 This policy applies to Maidstone Borough Council secure tenants only.
- 2.2 This policy aims to:
  - Clearly set out the requirements for a mutual exchange of properties for tenants and staff
  - Provide information on the circumstances for assigning or surrendering a tenancy
  - Set out the grounds for refusing an exchange
  - Provide a clear appeals process

## **3.0 Legal/ Regulatory Framework**

- 3.1 Maidstone Council will abide by the following legislation and requirements:
  - Housing Act 1985 S.92 and S.3
  - Welfare Reform Act 2012
  - Localism Act 2011
  - Equalities Act 2010

## **4.0 Types of Exchange**

- 4.1 The type of mutual exchange will depend on the tenancy that the applicant and their exchange partner have:
  - 4.1.1 By Way of Assignment

An assignment takes place when a tenant passes their tenancy onto their mutual exchange partner. This means no new tenancy is created.
  - 4.1.2 Assignments occur where both tenants have lifetime tenancies and fixed term tenancies. When tenants are assigned the tenancy, each tenant takes on the remainder of the fixed term. Secure tenants exchanging with an assured tenant are directed to seek independent legal advice about the loss of any statutory rights as a result of the exchange.

#### 4.2.1 By Way of Surrender and Regrant

“Surrender and re-grant” is another way of exchanging tenancies, whereby both tenants surrender their current tenancies and are granted new tenancies, not necessarily with the same conditions.

### 5.0 Eligibility/ Tenants Right to Exchange

#### 5.1 Who can Exchange- Qualifying Tenants:

Secure tenants have a statutory right to exchange. If the exchange is with someone whose landlord is a housing association, they will likely have an assured tenancy and their ability to exchange by way of assignment will depend on their contractual agreement.

5.2 The right to exchange does not apply whilst tenants are in the probationary period of their tenancy.

5.3 A tenant who has been served with a Notice to Quit or Notice of Seeking Possession (NoSP), and/or is subject to a Court Order will not be able to exchange their tenancy.

5.4 A tenant who holds a demoted tenancy will not be eligible to exchange their tenancy.

### 6.0 Grounds for Refusal

6.1 Maidstone Borough Council will not unduly refuse a tenants’ right to exchange. There are different sets of grounds for refusing a mutual exchange application, which is provided in the attached appendix.

6.2 The Council will approve or refuse all mutual exchanges within 42 days of receiving a full application with supporting documents.

### 7.0 Affordability

7.1 Maidstone Borough Council acknowledges that affordability is not one of the grounds for refusal set out in schedule 3 of the Housing Act 1985 or Schedule 14 of the Localism Act 2011. In these circumstances, the Council will discuss affordability with the applicant and set out what will happen if they are unable to pay their rent. This will allow tenants to consider whether they will proceed with the mutual exchange or not.

## **8.0 Unauthorised Exchanges**

- 8.1 If a mutual exchange takes place without written consent or Maidstone Borough Council's knowledge, occupants will be treated as unauthorised occupiers and will be advised to return to their own property within 7 days to avoid being served a Notice to Quit. Their mutual exchange application can continue to be considered if they return within the 7 days.

## **9.0 Right of Appeal**

- 9.1 If a tenant is unhappy with any decision made under this policy and they had a statutory and contractual right to exchange, then they have the right to appeal and ask for it to be reviewed.
- 9.2 This will then be investigated by the service manager or more senior person and responded to within 10 working days.
- 9.3 Please see the Council's Complaints Policy for further details.

## **10.0 Equality and Diversity**

- 10.1 Maidstone Borough Council adopts a flexible approach to ensure that different needs are met and well supported.
- 10.2 The Council recognise that some individuals may experience discrimination and disadvantage. An Equality Impact Assessment has been undertaken on this policy to ensure that all customers are treated fairly, regardless of any characteristics.

## **11.0 Monitoring, Evaluation and Review**

- 11.1 This Policy will be reviewed every 5 years, or sooner if significant and relevant statutory changes occur.

## Appendix A

### GROUNDS FOR WITHHOLDING CONSENT

#### 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 [F1395 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;

a criminal behaviour order within the meaning given by section 330 of the Sentencing Code.

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

A “demotion order” means a demotion order under section 82A of this Act 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 this Act 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, 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.

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.



**Further information: [maidstone.gov.uk/housing](http://maidstone.gov.uk/housing)**