

Mutual Exchange Policy

Our mission is to enhance the Life Chances of residents and service users through providing great homes, first class services and working in partnership to build sustainable communities.

1 Scope

1.1 This policy applies to secure and assured tenants with permanent, self-contained accommodation.

2 Policy

2.1 The aim of this policy is to:

- provide tenants with information on the requirements for a mutual exchange of properties
- ensure that the criteria for an exchange are met before an exchange can be undertaken
- provide guidance as to when an exchange can be refused.

2.2 We aim is to ensure that tenants have as many options for mobility as possible. Mutual exchange can help tenants exercise this choice.

2.3 We support tenant mobility through [House Exchange](#), the UK's only not-for-profit mutual exchange service, providing tenants with information and advice ensuring a smooth tenancy transition for exchange tenants.

2.4 We will not unreasonably withhold permission to exchange.

2.5 Grounds for refusal for secure tenants are set out in [Schedule 3 of the Housing Act 1985](#). There are some [additional grounds for reasonable refusal](#) for assured tenants.



Application

- 2.6 Eligible tenants can apply in writing to exchange their home with:
- another tenant within the Circle Group
 - a tenant of a local authority
 - a tenant of another registered non-profit social housing provider (registered provider).

Granting and refusing permission to exchange

- 2.7 We must grant or refuse the exchange within 42 days of receiving the application. This decision shall be in writing.
- 2.8 Where the exchange is with a tenant from another landlord or local authority, we will only make the decision after receiving a suitable tenant reference and consent from the other landlord.
- 2.9 Exchanges are made by way of assignment of tenancy and need the prior consent of the landlords concerned.
- 2.10 The other tenant must also have written consent from his or her landlord and must have the same right to exchange.
- 2.11 With secure tenants we may only refuse consent to an exchange on the grounds set out in Schedule 3 of the Housing Act 1985. See [Grounds for Withholding Consent](#)
- 2.12 With regard to assured tenants, we may refuse consent on the same grounds as set out in Schedule 3 of the Housing Act 1985 but may rely on other grounds. [See Additional Grounds for Withholding Consent](#)

3 Tenants' Rights

Secure tenancies

- 3.1 Secure tenants have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985 as amended by Section 163 of the Local Government and Housing Act 1989.

Assured tenancies

- 3.2 Assured tenants have been granted the right to assign by way of exchange as a contractual right in the tenancy agreement.

Assured furnished tenancies

- 3.3 Assured furnished tenants have the same rights as assured tenants, but tenants taking over the tenancy by way of mutual exchange must take on the furniture and related charges. The departing tenant leaves this furniture behind as it is tied in with the tenancy that they are assigning.

Protected assured tenancies

- 3.4 Protected assured tenants have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985 as amended by Section 163 of the Local Government and Housing Act 1989. This right is protected and outlined in their transfer and tenancy agreement.

Assured shorthold tenancies

- 3.5 Assured shorthold tenants do not have the right to exchange.

Starter tenancies

- 3.6 Starter tenants cannot exchange their home in the first 12 months of the tenancy, or during any extension period.

Joint tenancies

- 3.7 Joint secure or assured tenants must both consent to exchange and sign the Mutual Exchange Application Form and all other paperwork. See the Joint Tenancies Policy.

Right to appeal

- 3.8 Residents have the right to appeal an exchange decision.

4 Under occupation

- 4.1 Tenants who are moving to a smaller property by way of mutual exchange are not entitled to payment under incentives schemes for under occupation.

5 Property Damage

- 5.1 We will inspect the property before the exchange goes ahead. This will be regardless of whether the tenant has reported repairs issues on their Mutual Exchange Application form
- 5.2 Following the inspection, we will enforce that damage caused to a property by a tenant or a tenant's household is repaired or replaced before the exchange.
- 5.3 Any tenant damage will need to be put right before the exchange goes ahead. The tenant may also be recharged for any costs incurred. Recharge Policy
- 5.4 Where there is unrepaired tenant damage the exchange will be refused and a Notice Seeking Possession (NOSP) may be served.

6 Gas Safety

- 6.1 Gas Safety for mutual exchanges will be ensured in line with the Gas Safety (Heating Installations) Policy.
- 6.2 Before the exchange takes place there needs to be a valid gas safety certificate for the home. It is the outgoing tenant's responsibility to co-operate in allowing easy contractor access.

- 6.3 The incoming resident is responsible for allowing access to ensure a new gas safety check is completed for the property within 72 hours of moving in.

7 Electrical Safety

- 7.1 Electrical Safety will be ensured with the Electrical Safety Policy and a valid safety certificate in place before the exchange. It is the outgoing tenant's responsibility to co-operate by allowing the contractor access.

8 Grounds for Withholding Consent

- 8.1 There are specific grounds set out in law by which we can refuse consent to secure tenants. These are laid down under Schedule 3 of the Housing Act 1985. For assured tenants we may rely on these grounds but also additional grounds (see Additional Grounds for Withholding consent - below) to refuse an exchange.

- Ground 1 - Possession order outstanding
- Ground 2 - Possession proceedings outstanding or Notice of Seeking Possession (NOSP) in force
- Ground 2a - In respect of the tenant or the proposed assignee or a person who is residing with either of them
- Ground 3 - Underoccupation
- Ground 4 - Suitability
- Ground 5 – Non-housing accommodation or employment
- Ground 6 – Conflict with charitable aims
- Ground 7 – Accommodation designed for the disabled
- Ground 8 – Accommodation designated for special needs e.g sheltered or supported
- Ground 9 – Accommodation in group designated for special needs
- Ground 10 – Management agreement.

- 8.2 These statutory grounds are clearly detailed in [Appendix One](#).

9 Additional Grounds for Withholding Consent

There are additional grounds which we can reasonably refuse mutual exchange to assured tenants which are as follows:

- 9.1 Any relevant planning agreements and the purpose for which the premises are provided. Such as;
- Section 106 local connection restrictions
 - Any planning agreement restrictions which affect the local allocations or lettings policy.
 - A designated supported housing property: the incoming tenant's need for the support service will be assessed before a decision is made to allow the exchange.
 - Where there is a head-lease any covenants binding the tenancy

- Exceptional circumstances where it would not be reasonable to consent to exchange. (Senior level advice must be sought in these cases).

10 Unauthorised Mutual Exchange

10.1 In the event of mutual exchange without landlord consent we will treat the occupants as unauthorised occupiers in line with our Abandonment and Absent Tenants Policy.

11 Equality and Diversity

11.1 Circle will treat all customers and staff with fairness and respect. We value diversity and work to promote equality and tackle unlawful discrimination.

11.2 We are committed to helping customers to access information about their homes and services in a way that suits individual needs. Please get in touch with your local provider to discuss this.

Appendix One

Statutory Grounds for Withholding Consent

Ground	Definition
Ground 1 – Possession order outstanding	The tenant or the proposed assignee is obliged to give up the dwelling house of which he is the secure tenant in pursuance of an order of the court, or will be so obliged at a date specified in such an order.
Ground 2 – Possession proceedings outstanding or Notice of Seeking Possession (NOSP) in force	Proceedings have 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 - 6 in Part 1 of Schedule 2 (Grounds upon 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 these grounds is still in force. See Grounds for Possession.
Ground 2a – In respect of the tenant or the proposed assignee or a person who is residing with either of them	<ul style="list-style-type: none"> • 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; or • An injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003. • A “demotion order” means a demotion order under section 82A of the Housing Act 2004 or section 6A of the Housing Act 1988.
Ground 3 – Under occupation	The accommodation afforded by the dwelling house is substantially more extensive than is reasonably required by the proposed assignee.

	<p>The Department of Environment has stated that the existence of one spare room would not make the property 'more extensive than required'.</p> <p>"...the Secretaries of State ask councils to be flexible in considering to decline consent to exchange on this ground: the enjoyment of a spare bedroom should not...be regarded as substantial under occupation."</p> <p>DoE circular (24/84 para 110)</p>
Ground 4 – Suitability	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 – Non-housing accommodation or employment	<p>The dwelling house:</p> <p>a) forms part of or is within the boundaries of a building which, or so much of it is held by the landlord, is held mainly for purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and</p> <p>b) was let to the tenant or a predecessor in title in consequence of the tenant or predecessor being in employment of:</p> <ul style="list-style-type: none"> • the landlord, • a local authority, • a development corporation • a housing action trust • an urban development corporation, or • the governors of an aided school.
Ground 6 – Conflict with charitable aims	The landlord is a charity and the proposed assignees occupation of the dwelling house would conflict with the objects of the charity.
Ground 7 Accommodation designed for the disabled	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.

<p>Ground 8 – Accommodation designated for special needs e.g. Sheltered or supported</p>	<p>The landlord is a housing association or a 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 the need for housing and if the assignment were to be made there would no longer be such a person residing in the dwelling house.</p>
<p>Ground 9 – Accommodation in group designated for special needs</p>	<p>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 to be made there would no longer be a person with special needs residing in the dwelling house.</p>
<p>Ground 10 – Management Agreement</p>	<p>The dwelling house is subject to 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.</p>