

MUTUAL EXCHANGE PROCEDURE



MONITORING INFORMATION:

POLICY/PROCEDURE/STRATEGY:	MUTUAL EXCHANGE PROCEDURE
DATE APPROVED:	FEBRUARY 2025
EXPIRY DATE:	FEBRUARY 2028
OWNER:	COMMUNITIES AND COMPLIANCE MANAGER
APPROVAL ROUTE:	RESIDENTS' FORUM/EXECUTIVE MANAGEMENT TEAM

Mutual Exchange Procedure

1. Introduction

- 1.1. As a Social Landlord Teign Housing recognises the role of mutual exchanges in addressing housing need as well as enabling residents to realise their own aspirations. This procedure sets out the way that mutual exchanges should be processed to ensure a fair approach is adopted that also meets legislative and regulatory requirements. This procedure should be read in conjunction with the Policy for mutual exchanges.
- 1.2. When the Renters' Rights Act is passed and enacted for social landlords, this Procedure will be amended as some of the tenancy types referenced in the Policy and Procedure will no longer exist.

2. Registering and applying for a mutual exchange

- 2.1. Residents can register their interest in conducting a mutual exchange with "homeswapper" (homeswapper.co.uk), an online system that Teign Housing subscribes to. Residents may also be able to identify mutual exchanges through a range of other methods including word of mouth or social media. When we have received mutual exchange application forms from all involved parties, we will begin to process the mutual exchange.

3. Types of Exchange

- 3.1. The execution of the 'exchange' is undertaken in two ways, either 'by way of assignment', or by 'surrender and regrant'.

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.

Surrender and regrant is where tenants surrender their current tenancy and re-sign a tenancy with a similar security of tenure for their new property. This is used when the parties exchanging hold tenancies with different security, and one of the parties has their security protected by law.

- 3.2. Tenants who hold a lifetime tenancy (secure or assured) that commenced before 1st April 2012 have their security of tenure protected by law. Therefore, these tenants

cannot carry out an exchange (by assignment) with a tenant on a fixed term tenancy. However, the protected security of tenure does not apply when assured/secure tenants choose to exchange with a fixed term tenant on an affordable rent.

Tenant 1	Tenant 2	Mutual Exchange by:	Exceptions
Fixed	Fixed	Assignment (swapping tenancies)	From 15 November 2021 only Affordable Fixed Term Tenancies are being issued. Social Fixed Term Tenancies will be issued with an Assured Tenancy. If the Fixed Term Affordable Tenancy is less than 2 years will issue a new tenancy
Secure/Assured	Secure/Assured	Assignment (swapping tenancies)	
Secure/Assured	Fixed	Surrender & Regrant (each tenant gets a new assured tenancy not a fixed term as no longer issuing from April 2021 with the same/similar level of security as they currently have)	If the secure/assured commenced after April 2012: exchange by assignment. If the fixed term has less than 2 years an affordable rent assured tenancy will be issued: exchange by assignment.

4. Processing a Mutual Exchange (MEX)

- 4.1 Consent must be sought from each respective Landlord before conducting an exchange and conditions will need to be met for consent for the mutual exchange to be granted.

5. Acknowledging the MEX

- 5.1 On receipt of the mutual exchange application forms we will acknowledge receipt of the MEX (MEX04/04a) and confirm the target decision date (42 days), the weekly rent and the tenancy type being offered to applicants moving to Teign Housing properties.

6. Tenancy References

- 6.1 For all applicants moving from other social landlords, we will seek a tenancy reference from their landlord. It is likely that we will also be asked to complete a tenancy reference for other landlords. The purpose of the tenancy reference is to confirm; tenant names, household composition, rent type, tenancy conduct (including rent arrears, property condition, and behaviour).

7. Pre-Tenancy Interview

- 7.1 In order to collect the relevant information, we need to approve a mutual exchange and effectively manage the tenancy we will conduct a pre tenancy interview. We will explain to the tenant, verbally and in writing, the difference between an exchange and a transfer and provide a copy of the tenancy agreement which the incoming tenant will be taking over. We will also inform the tenant that the assignment comprises a succession so no further succession will be possible.

8. Affordability Assessment

- 8.1 An affordability assessment will be used for those applicant(s): looking to MEX to larger accommodation who will be occupying the property; those moving to Teign Housing from other social landlords or those who are looking to MEX into an Affordable Rent property. The affordability assessment uses government defined 'applicable amounts' in terms of income and expenditure.

9. Property Inspection

- 9.1 A property inspection will be carried out as part of the process and will be carried out by (ordinarily) the patch Community Housing Office or Independence & Wellbeing Adviser and the area building surveyor. During the inspection photographs should be taken of any disrepair or items that are going to form part of the disclaimer for the

incoming tenant. The inspection is not intended to be a thorough survey and can only be a visual inspection (because the property will be occupied). While every effort will be made to identify all defects there may be instances when issues go unidentified by staff. Any defects that are as a result of wilful damage or neglect will need to be put right by the outgoing tenant.

9.2 Identified damage

Any damage or repairs which are the tenant's responsibility identified at the inspection will be noted. It is expected that the outgoing tenant repairs any damage or completes any repairs for which they are responsible to a satisfactory standard.

9.3 Tenant alterations

During their tenure residents may seek permission to make alterations to the property. When carrying out an exchange it is commonplace for the incoming tenant to accept responsibility for the ongoing maintenance of these items. Any alterations that are accepted by the incoming tenant should be photographed and the detail recorded on the disclaimer. If unauthorised works are identified at the MEX the Community Housing Office or Independence & Wellbeing Adviser will determine the best course of action whether that be asking the tenant to rectify the issue or grant retrospective permission and note the alteration on the disclaimer.

10. Compliance checks

10.1 For the mutual exchange to take place we will need to ensure there is a current and valid Landlord Gas Safety Record, electrical inspection and asbestos survey.

10.2 Electrical inspection - in all cases a visual safety inspection will be carried out.

Following this we may need to do a more thorough electrical inspection. If any health and safety issues are identified a repair will be carried out, if these are as a result of unauthorised alterations the balance of the recharge will need to be paid before the works can proceed. Any other unauthorised electrical alterations must be rectified before the MEX can proceed.

10.3 The incoming tenant will be given the Welcome Pack issued to new tenants, providing compliance certificates, information about any asbestos containing materials in the property and the energy performance certificate.

11. The Disclaimer

11.1 The disclaimer document is signed by tenants moving into Teign Housing properties. This document details any items of disrepair the incoming tenant is accepting, any authorised permissions the incoming tenant is accepting, any items that remain in the property (by agreement of both parties), that any items left by the outgoing tenant are not Teign Housings' responsibility to remove, as well as identifying any outstanding works that need to be carried out.

12. Fixed Term Tenancies

12.1 If at the point of receiving an application a tenant is within the final two years of the fixed term tenancy, we will undertake a review of the tenancy based prior to the exchange taking place. The review will be conducted based on the incoming tenants' circumstances. If we are conducting the exchange by assignment, we will grant a new Assured Tenancy post exchange.

12.2 If we are executing the exchange by way of surrender and re-grant, we will issue a new Assured tenancy at the point of exchange.

12.3 If the tenancy is an Affordable Rent and an Assured Tenancy is being issued, we will re-base the affordable rent amount. The independent valuation will be undertaken by an appointed estate agent, the amount will not exceed 80% of the market rent and will not exceed the local housing allowance.

12.4 Fixed Term Tenancies will no longer exist once the Renters' Right Act is passed for social landlords.

13. Grounds for refusal

13.1. Teign Housing will not ordinarily refuse consent for a mutual exchange, unless one of the conditions set out applies (the term tenant applies to either the prospective or current tenant);

- The tenant has been served a notice of seeking possession in relation to any breach of tenancy (including rent arrears and anti-social behaviour)
- The tenant is subject to ongoing legal proceedings in relation a breach of tenancy this may related to possession proceedings, injunction proceedings, committal proceedings, or demotion proceedings.
- The tenant is subject to a court order, e.g. a suspended possession order or an injunction.

- The tenant holds a starter tenancy, whilst we allow starter tenants to apply for mutual exchange this cannot be conducted until the tenancy has converted from the starter period.
- Teign Housing is unable to get the approval from the other involved landlord.
- The tenancy reference provided from the other involved landlord identifies a reason for refusal outlined in this section.
- A TH property benefits from significant adaptations that the incoming tenant does not require. However, this will be dependent on the property size, type and location as well as the age and extent of the adaptations.
- MEX tenants may under occupy their new home by one bedroom (subject to affordability checks). We will not permit any higher level of under occupation.
- We will only permit over occupation by a maximum of one bedroom, where one of the tenants can evidence, they are moving to more appropriately sized accommodation.
- The property is designated as older person's accommodation, and the prospective tenant does not meet the criteria set for older persons' accommodation.
- Where the property is an affordable rent an affordability assessment will be undertaken with the incoming tenant, any consent will be subject to the property being affordable to promote tenancy sustainability.

14. Mutual Exchanges and Section 106 Agreements

14.1 We expect tenants living in a property that was let to them under a S106 or Local Letting Plan to try to find an MEX with another tenant that meets the criteria of these agreements. We should remind tenants living in these properties as soon as we are aware, they are seeking an MEX e.g. registering on Homeswapper or requesting an MEX application form. At this point we should provide them with the criteria a prospective MEX applicant for their property should meet. We recognise that meeting these criteria and applying it to an MEX will not necessarily be easy and that we are legally unable to refuse a MEX on the grounds that the incoming tenant does not meet the local lettings criteria.

15. Refusing a mutual exchange

15.1 Our standard approach to refusing mutual exchanges will be to refuse outright this is for consistency and clarity for all applicants involved in a MEX. The MEX will be refused in writing and will explain (with due regard for confidentiality) the reason for the refusal and what steps can be taken to address the issue. We will make decisions

efficiently and effectively in order to minimise disruption to the applicants. If there is a reason for refusal applicants should be informed as soon as practicable and we should not be delaying decision making until the mutual exchange 'decision date'.

16. Conditional consent

16.1 There may be instances where we exercise our discretion to grant conditional consent although all applicants need to hold either a Secure Tenancy (generally Local Authority) or an Assured Tenancy (dated pre-1 April 2012). Conditional consent can be used to approve an MEX within the 42-day timescale subject to certain conditions being met in a specific timeframe e.g. we can agree to approve a MEX on the proviso that rent arrears are cleared within 13 weeks and arrange the MEX to take place after that date. The use of conditional consent will be at the authority of the Communities and Compliance Manager and will be determined on a individual basis, and will relate to what we consider to be extenuating circumstance, for example to facilitate a move for a victim of domestic abuse.

17. Appeals

17.1 Any decision to refuse consent is subject to an appeal, and this will be dealt with by a manager not previously involved in the exchange application. Appeals will only be upheld where the procedure has not been followed correctly and therefore the refusal reason(s) are not valid, or if there are additional discretionary circumstances identified. The Communities and Compliance Manager will confirm an action plan with the applicants involved and will provide a full response within 10 working days.

18. Managing Data and confidentiality

- 18.1. The application form and pre tenancy interview will include a detailed privacy notice explaining how tenants' information will be managed as part of the mutual exchange.
- 18.2. The information relating to the incoming tenants mutual exchange will be held on the tenancy file. Any information relating to any former tenant will be retained in line with Teign Housing's retention policy.
- 18.3. The information relating to any refused or cancelled mutual exchanges will be destroyed one month after the mutual exchange has been cancelled/refused.
- 18.4. Under the General Data Protection Regulations (GDPR) and the Human Rights Act 1998, all personal information, however received, is treated as confidential. Teign Housing will ensure that they only involve other agencies and share information with the consent of the resident concerned, unless we are required to by law, or if the information is necessary for the protection of children.

19. Performance monitoring

- 19.1. The ongoing monitoring of performance is essential in terms of meeting the 42-day legislative requirement to process and give a decision on a mutual exchange.
- 19.2. A quarterly report will be provided to the Housing Services Team to monitor the performance in line with the target.
- 19.3. Tenants who have moved by way of mutual exchange will be asked to take part in a satisfaction survey and equally the information relating to this will be reported on a quarterly basis.
- 19.4. The Communities and Compliance Manager and Senior Housing Officers will monitor 15% of MEXs to check that they comply with this Policy and Procedure.