



# NLM Housing Association

## Mutual Exchange Policy

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## 1 INTRODUCTION

As a Social Landlord NLM recognises that mutual exchange is a useful way of satisfying housing needs and aspirations. It is important that exchanges are conducted fairly and in line with regulation and legislation. This policy should be considered in conjunction with the NLM Letting Policy.

### 1.1 Definition

For the purpose of this policy, mutual exchange is defined as the exchange of properties by a tenant or tenants of NLM with a tenant or tenants of NLM, another housing association or local authority. Exchanges can only take place between social housing tenants.

Mutual exchange does not include the internal transfer of NLM residents to a vacant property.

## 2 AIMS & OBJECTIVES

- To provide tenants with the support and information needed to complete applications for mutual exchange.
- To provide clear advice on the implications of mutual exchange.

## 3 POLICY STATEMENT

NLM's assured tenants have the right to exchange with secure or assured tenants of another registered housing association, local authority or charitable housing trust. Starter tenants are not eligible to carry out a mutual exchange.

Tenants must seek consent from NLM before an exchange can take place. NLM may withhold consent until a condition is satisfied (see **Section 4.1**) or may refuse the exchange where permitted by law (see **Section 4.2**).

NLM expects tenants to take on the responsibilities of the tenant they are exchanging with, which includes the condition of the property at the time of the exchange taking place. NLM will advise tenants of their repair responsibilities and liabilities when an exchange is proposed.

There will be no cost to NLM due to any exchange.

## 4 CONDUCTING A MUTUAL EXCHANGE

### 4.1 Registering for an exchange

Tenants wishing to swap homes are advised to register with [www.homeswapper.co.uk](http://www.homeswapper.co.uk) to find someone willing to agree to a mutual exchange.

Once they have found another tenant willing to exchange, the tenant will need to complete a Mutual Exchange Application Form to request consent.

Tenants will be made aware that any party can withdraw from a potential mutual exchange at any stage with no recourse to the other party. However, once the parties have signed the assignment or the new tenancy agreement then the mutual exchange must proceed.

## 4.2 Types of exchange

Mutual exchanges are carried out in the following way:

- Through **assignment**
- Through **surrender and regrant** of tenancies.

**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. This is because Tenant A will take over Tenant B's tenancy and vice versa.

**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. For example, a fixed term tenant exchanging with a lifetime assured/secure tenant.

**Section 4.3** sets out when each kind of exchange will be used.

## 4.3 Exchange by assignment or surrender and regrant

Tenants who hold a lifetime (secure or assured) tenancy that was granted on or before 1<sup>st</sup> 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 for an affordable rent.

The table below sets out whether an exchange by assignment or by surrender and regrant will take place.

Tenant 1	Tenant 2	Mutual exchange	Exceptions:
Flexible/Fixed	Flexible/Fixed	<b>Assignment</b> (swapping tenancies)	Internal exchanges between NLM tenants: surrender & grant 5-year tenancies
Secure/Assured	Secure/Assured	<b>Assignment</b> (Swapping)	
Secure/Assured	Flexible/Fixed	Surrender & Regrant (Each tenant gets a new tenancy with the same/similar level of security as they currently have)	If the secure/assured commenced after 1 <sup>st</sup> April 2012: exchange by <u>assignment</u> . If the fixed term has an affordable rent: exchange by <u>assignment</u> .

## 4.4 Conditions for Mutual Exchange

Tenants must obtain consent from NLM before carrying out a mutual exchange, and

certain conditions will need to be met for consent to be granted.

Where the proposed exchange will be conducted by assignment NLM may withhold consent until the condition has been met.

The conditions are as follows:

1. That rent arrears, or any other debts such as court costs, are cleared
2. That a breach of the tenancy agreement be remedied, for example:
  - Invalid Gas Safety Certificate due to lack of access/cooperation
  - Unauthorised alterations
  - Damage to property beyond wear and tear

If a tenant has an invalid gas safety certificate, consent will be withheld until access has been given and a check has been carried out.

#### **4.5 Refusing Mutual Exchange**

NLM may refuse an application for mutual exchange on different grounds depending on whether the exchange would happen by assignment, or by surrender and re-grant.

Grounds for refusing exchange by Assignment are as follows:

- The tenant or other person applying for the exchange is under a court order to give up possession
- Possession proceedings have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
- Where a court order is in force against a tenant or proposed tenant which is based on antisocial behaviour, e.g., a suspended possession order, an antisocial behaviour injunction, a demotion order or a closure order
- The accommodation would be too large for the prospective tenant, or otherwise not reasonably suitable to their needs
- The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or a cemetery
- The landlord is a charity and the proposed tenant's occupation will conflict with its objectives
- The property is designed for a physically disabled person, and if the proposed tenant moved in, there would be no such person in occupation
- The landlord is a special needs housing association or housing trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
- The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation
- It comes to the attention of NLM that money incentives were paid to any party in respect of the proposed assignment
- Where any party has served notice to quit to end the tenancy prior to making a mutual exchange application
- The applicants must produce evidence that the property they are living in remains their principal home. Landlords of respective tenants should confirm this in writing.

### Grounds for refusing exchange by Surrender and Regrant:

- Any rent lawfully due from a tenant under one of the existing tenancies has not been paid
- An obligation under one of the existing tenancies has been broken or not performed
- Any of the relevant tenants is subject to an order of the court for possession
- Proceedings for possession have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order
- Where a court order is in force against a tenant of one of the existing tenancies which is based on anti-social behaviour, e.g., a possession order or suspended possession order, an antisocial behaviour injunction or a demotion order
- Proceedings have been issued for possession on ASB grounds, or for an ASB injunction or demotion order
- The accommodation proposed to be let on the new tenancy would be too large for the existing tenant or tenants to whom the tenancy is proposed to be granted
- The accommodation proposed to be let on the new tenancy is not reasonably suitable to the needs of the existing tenant or tenants to whom the tenancy is proposed to be granted, or their family
- The premises were let in consequence of employment, and form part of, or are in the grounds of, a non-housing building or cemetery
- The landlord is a charity and the proposed tenant's occupation will conflict with its objectives
- The property is designed for a physically disabled person and if the proposed tenant moved in there would be no such person in occupation
- The landlord is a special needs housing association or housing trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation
- The accommodation is sheltered, and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation
- It comes to the attention of NLM that money incentives were paid to any party in respect of the proposed assignment.

**If NLM refuses a mutual exchange, the tenant will be sent a refusal letter which will quote the exact ground or grounds for refusal.**

#### **4.6 Refusal on grounds of under occupation or overcrowding**

An exchange will be refused if it will result in under occupation or overcrowding. This will be calculated by the standard number of bedrooms required as follows:

- Two or more people over 10 years of age and of different sex must not share a bedroom unless they are living as partners.
- Every couple shares a double bedroom.
- Every single adult must have their own single bedroom, except that a single parent is to have a double bedroom.
- Two children of the same sex may share a double bedroom.
- Two children of different sex, both under 10 years of age, may share a double bedroom

This is illustrated as follows in terms of property size by number of bedrooms:

Household	Bedrooms	Bed Spaces
1 or 2 Adults	Bedsit or 1 bedroom	1 or 2
With one child	2	3 or 4
With 2 same sex children both under 10 years of age	2	4
With 2 opposite sex children, either child 10 + years of age	3	4 or 5
With 3 children	3	5 or 6
With 4 children	3 or 4	5 or 6
With 4 children – 3 same sex, 1 opposite sex	4	6 or 7
With 5 children	4	7 or 8
With 6 children	4 or 5	8 or 9
With 7 +	5	9 or 10

In determining whether the property will be overcrowded, NLM will take into consideration any expected children i.e., where there is an expectant mother moving into the property.

NLM will ensure that the size of the property matches the size of the household as far as possible in line with the above information.

## 5 APPEAL

Any applicant who has had a request for mutual exchange refused may request that the decision be reviewed by the executive team at NLM.

## 6 LEGISLATION, REGULATION & GUIDANCE

Government legislation and regulatory requirements issued by the Regulator of Social Housing have an impact on how NLM can implement its Mutual Exchange policy. Listed below are the key Acts and Regulation that have been acknowledged:

- Housing Act 1985 (as amended)
- Equality & Diversity Act 2010
- Localism Act 2011
- Tenancy Standard of the Regulatory Framework

## 7 CONFIDENTIALY

Under the GDPR, the Data Protection Act 2018 and the Human Rights Act 1998, all personal information received in respect of a mutual exchange, however received, is treated as confidential.

This includes:

- anything of a personal nature that is not a matter of public record about a

resident/applicant

Officers will ensure that they only involve other agencies and share information with the consent of the resident concerned, unless:

- NLM is required to by law
- the information sharing is necessary for the protection of children